IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
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Coordination Proceeding Special Title (Rule 1550(b))	JCCP No. 4042
In re TOBACCO CASES II	
This document relates to: The People of the State of California, et al. v. Philip Morris, Incorporated, et al., Los Angeles Superior Court Case No. BC 194217;	
The People of the State of California, et al. v. General Cigar Co., et al., San Francisco Superior Court Case No. 996780;	
The People of the State of California, et al. v. Brown & Williamson, et al., San Francisco Superior Court Case No. 996781;	
The People of the State of California, et al. v. Tobacco Exporters, et al., San Francisco Superior Court Case No. 301631.	

DEPOSITION OF

GERALD H. KILBERT

Tuesday, August 1, 2000

REPORTED BY: SHANNON TAYLOR-SCOTT, RPR, CSR 10067
JOB NO. 05-96469

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and additional Plaintiffs.	

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BE IT REMEMBERED that, pursuant to Subpoena, and on Tuesday, August 1, 2000, commencing at 9:43 a.m. thereof, at the California Department of Education, 515 "L" Street, 2nd Floor, Sacramento, California 95814, before me, SHANNON TAYLOR-SCOTT, a Certified Shorthand Reporter, personally appeared

GERALD H. KILBERT

called as a witness by the Defendants, who, having been first duly sworn, was examined and testified as follows:

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ALSO PRESENT:

KAREN THRO, PARALEGAL TO MR. LERNER

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EXAMINATION BY MR. LERNER

MR. LERNER: Q. Please state your full name.

A. Gerald Kilbert.

Q. Mr. Kilbert, my name is Henry Lerner. I'm with the law firm of Allen Matkins Leck Gamble & Mallory in San Francisco. You've been subpoenaed today by the Defendants in two lawsuits involving issues pertaining to environmental tobacco smoke and public awareness thereof. My firm represents Lorillard Tobacco Company, which is among the Defendants in those cases. The lawsuits are pending in San Diego County, and the purpose of our securing your deposition today is to obtain information concerning Department of

Education programs pertaining to tobacco control education and specifically to education concerning environmental tobacco smoke, and for purposes of today's deposition, I'll be referring to environmental tobacco smoke sometimes as "environmental tobacco smoke," sometimes as "ETS" and sometimes as "secondhand smoke." When I use those terms, I mean them interchangeably, if you can understand them as such; is that fair?

A. Yes.

Q. Now, have you ever been deposed before?

A. Yes.

Q. And how many times?

A. Twice.

Q. And I assume you've had a chance to run through the rules concerning depositions with Mr. Aguilar who is here as your attorney?

A. Very briefly.

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19 Q. All right. Well, I'll review them again
20 with you --
21 A. Okay.
22 Q. -- just to make sure we all understand the
23 ground rules. A deposition is testimony under oath,
24 and you've been sworn in by the court reporter. Your
25 testimony will be transcribed into a booklet by the
26 court reporter who will take down verbatim the
27 questions and the answers that are given today.
28 After the deposition is concluded, the court

1 reporter will transcribe the testimony into a booklet.
2 You'll be able to read, review and comment or make any
3 changes you desire to the transcript. If you do make
4 any changes, the attorneys will have a chance, an
5 opportunity at trial, to comment on the changes,
6 reflecting whether pertaining to your credibility or to
7 the accuracy of the information that's given or any
8 other basis for comment.
9 As a result, you know, we're asking you to
10 testify here today to things that you know from your
11 personal knowledge. I'm not asking you -- I do not
12 want you to guess or speculate as to the answers to any
13 of my questions. I do -- and I do ask, however, that
14 you give your best recollection of the matters which
15 are called for by the questions or your best estimate
16 as to any particular dates or times or events, but by
17 no means am I asking you to testify beyond the bounds
18 of your knowledge or, you know, to fill in events that
19 you can't remember. In fact, I ask you not to do that
20 so that the testimony is as accurate as possible.
21 I'm going to be asking you about things that
22 presumably are more familiar to you than to me. That's
23 why we're here to ask about them. As a consequence, I
24 may not have a full understanding of what I'm asking
25 about or an understanding that is congruent with your
26 understanding of events. If my questions do not make
27 sense to you or they -- you don't understand them, I
28 ask that you not answer them but, instead, ask me to --

1 tell me you don't understand them and instead ask me to
2 rephrase them or re characterize whatever it is I'm
3 asking about; is that all right?
4 A. Yes.
5 Q. Now, in order for the court reporter to get
6 an accurate transcript, your answers need to be
7 audible. That means you need to say "yes" or "no"
8 rather than nod your head, for example, and it's also
9 important that we not talk at the same time so that the
10 court reporter can get down what both of us says; is
11 that fair?
12 A. Yes.
13 Q. Now, if you need a break at any time or wish
14 to talk with your attorney, just let me know and we'll
15 go off the record so that can be done, all right?
16 A. Yes.
17 Q. Thank you.
18 A. You're welcome.
19 Q. Can you please tell me your present position
20 with the Department of Education?
21 A. I'm the Administrator of the Healthy Kids

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22 Program Office.
23 Q. And how long have you -- or when did you
24 first take that title?
25 A. May of 1996.
26 Q. I'm going to ask you a few questions
27 generally about your educational and professional
28 background so we can understand your present work.

1 Would you briefly tell me what your
2 educational background is starting with college.
3 A. I have a BA in Accounting. I have an MA in
4 Business Education, and I have an Educational Doctorate
5 in Curriculum Instruction.
6 Q. And when did you obtain your accounting
7 degree and where?
8 A. Oh, boy. Pretty close to January of 1965 at
9 the California State University - San Francisco.
10 Q. And when and where did you obtain your MA?
11 A. Approximately June of 1969 at the California
12 State University - San Jose.
13 Q. And when and what year did you obtain your
14 Doctorate in Education?
15 A. Oh, boy. About June of 1998 through the
16 University of Southern California. That last date is
17 very approximate because I don't absolutely recall
18 exactly.
19 Q. During what period of time were you taking
20 courses -- course work or doing work on your doctorate?
21 A. About three years preceding that '89 date
22 that I gave you.
23 Q. So approximately '96 through '98?
24 A. No. No. Excuse me. '88. Did I say,
25 "'98"?
26 Q. Yes.
27 A. I'm sorry. I'm sorry.
28 Q. So your doctorate was 1988?

1 A. '88.
2 Q. And your doctorate studies were in '86?
3 A. '85 to '88.
4 Q. And were you in residence at that time at
5 USC?
6 A. You had to maintain a residency, which I was
7 able to do through a combination of traveling and
8 staying in a dorm over a semester.
9 Q. I see. Now, what was your first work or
10 professional position after you got your MA?
11 A. As a teacher at Hayward High School in
12 Hayward, California.
13 Q. And during what years were you a teacher at
14 Hayward High School?
15 A. Oh. Okay. Let's see. Approximately 1967.
16 January of '67 to June of '69.
17 Q. Okay. Then what was your next professional
18 position?
19 A. It would have been September of '69 till
20 about '76, I guess. It would have been -- let me think
21 for a second here. It would be '75. It would have
22 been until June of '75. Excuse me. Yeah. June of
23 '75, and that would have been as a -- at Sonoma Valley
24 High School.

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25 Q. And what was your position at Sonoma Valley
26 High?
27 A. I was a teacher and a department
28 chairperson.

1 Q. What were you teaching at Sonoma Valley
2 High?
3 A. A variety of business education classes.
4 Q. And you were a chairman of the Business
5 Education Department?
6 A. Right.
7 Q. What did you teach at Hayward High?
8 A. Business education classes.
9 Q. Then what was your next position after
10 Sonoma Valley High?
11 A. I was a negotiator and financial consultant
12 with the California Teachers Association.
13 Q. During what period of time did you have that
14 position?
15 A. I did that part time while I was a teacher,
16 and then I went full time for a short period of time
17 from the end of that last date I gave you until about
18 January of 1976.
19 Q. When did you start doing that part time?
20 A. Probably a year after I started at Sonoma
21 Valley High School.
22 Q. So for about five or six years?
23 A. Right.
24 Q. Then what was your next professional
25 position after that?
26 A. I served as a business education consultant
27 in the California Department of Education, starting in
28 1976.

1 Q. And how long did you have a position as a
2 business education consultant with the Department of
3 Education?
4 A. I'd say until approximately 1983.
5 Q. And have you been with the Department of
6 Education continuously since 1976?
7 A. Yes.
8 Q. Okay. What was your next position after
9 that of Business Education Consultant?
10 A. I was a manpower education consultant for
11 about six months.
12 Q. And what was your next position after that?
13 A. Administrator 2, responsible for -- it was
14 still called Manpower Education.
15 Q. And what were the dates of your position as
16 Administrator 2?
17 A. Where was I when I ended at the last one?
18 Q. You said that you were a business education
19 consultant until 1983, then a manpower education
20 consultant for about six months.
21 A. Six months. I'd say -- I'd say till '87.
22 Q. So that would be '83 to '87 as
23 Administrator 2?
24 A. Yes.
25 Q. And what was your next position after that?
26 A. I was Assistant Superintendent of Public
27 Education.

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28 Q. What years did you hold that position?

1 A. Where was I? Where did I end on the last
2 one?
3 Q. 1987, you left off from.
4 A. Okay. So let's go from '87 till '96, 1996.
5 Q. And then the next position after that was as
6 Administrator of the Healthy Kids Program Office?
7 A. Actually, there was a one-year period of
8 time in between in which I was an administrator on
9 special assignment. So it must have been '96...
10 Q. So you mentioned that you became
11 Administrator of the Healthy Kids Program Office in
12 May 1996.
13 A. Yeah. So let's take a year off going back
14 the other way then.
15 Q. Okay. So just to clarify the record, you
16 were Assistant Superintendent of Public Education until
17 1995?
18 A. Yeah.
19 Q. Then you had a year as Administrator on
20 Special Assignment?
21 A. Right.
22 Q. And then in May '96 you became Administrator
23 of the Healthy Kids Program Office?
24 A. Right.
25 Q. All right. Thank you.
26 What were your duties as Assistant
27 Superintendent of Public Education?
28 A. I was responsible for a variety of statewide

1 programs. Those programs included adult education,
2 alternative education, all employment preparation
3 programs, continuation high schools, summer school,
4 teenage pregnancy, parenting programs, and a variety of
5 other statewide programs.
6 Q. And who did you report to as Assistant
7 Superintendent?
8 A. I reported to a deputy superintendent, and
9 they changed and I'm not sure I can recall the
10 sequence, but I believe it was Javier Delbono. Then it
11 was Shirley Thornton. Then it was one who was rather
12 short-lived. I can't recall his name.
13 Q. Was there a tobacco control aspect to any of
14 the programs you were responsible for as Assistant
15 Superintendent?
16 A. No.
17 Q. When you say you were responsible for the
18 programs, what do you mean?
19 A. I recommended policy to the Superintendent
20 and the State Board of Education. I administered the
21 staff, which consisted of about 80 people in a variety
22 of positions, responsible for the processing of all
23 documents and all procedures, all funding, and any
24 other duties as assigned.
25 Q. Now, during the period of about one year
26 when you were Administrator on Special Assignment, what
27 were your duties?
28 A. Let's see. My predominant duty was to

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1 handle waiver requests with regard to class size, and
2 my second most -- let's see. My second responsibility
3 was to assist in reviewing district budgets.
4 Q. Did any of your responsibilities as
5 Administrator on Special Assignment pertain to any
6 tobacco control education matters?
7 A. No.
8 Q. Prior to the time that you became
9 Administrator of the Healthy Kids Program Office, did
10 you have any work experience in matters relating to
11 tobacco control education?
12 A. No.
13 Q. Can you tell me what your duties and
14 responsibilities are as Administrator of the Healthy
15 Kids Program Office?
16 A. I report to an assistant superintendent.
17 His name is Dr. Wade Brynelson, B-r-y-n-e-l-s-o-n. I
18 am responsible for managing a staff of about 18 people,
19 including some student assistants. We recommend policy
20 to the assistant superintendent. I represent the
21 department on various committees related to the subject
22 areas, and we're responsible for distributing funds for
23 both the Tobacco-Use Prevention Education Program and
24 the Safe and Drug Free Schools and Communities Act-
25 funded programs.
26 Q. Have your duties as Administrator of the
27 Healthy Kids Program changed in any respect since you
28 took that position in May 1996?

1 A. No.
2 Q. Have you always reported to the same
3 Assistant Superintendent?
4 A. Yes.
5 MR. LERNER: Off the record.
6 (Discussion held off the record)
7 MR. LERNER: Back on the record.
8 Q. What, to your knowledge, are Mr. Brynelson's
9 responsibilities with respect to tobacco control
10 education programs?
11 A. I assume -- I mean I don't want to say it
12 that way. He is my supervisor. As a result, he
13 reviews documents that we prepare and would sign off
14 based upon department policy on various contracts, and
15 on the documents that go forward, he would edit and
16 comment upon papers and that sort of thing that might
17 go to the Deputy whose name is Kathy Lewis and,
18 subsequently, to the Chief Deputy whose name is Leslie
19 Faucet and, ultimately, the Superintendent of Public
20 Instruction, Delaine Eastin.
21 Q. Okay. You said you have a staff of 18 which
22 includes student assistants. Has your staff been
23 approximately the same size since May 1996?
24 A. Yes.
25 Q. How many of your staff have been full time?
26 A. Approximately 14. 14.
27 Q. And how many of your staff are occupied full
28 time with either the TUPE -- or the TUPE Program and

1 the Safe and Drug Free Schools Programs?
2 A. That's a difficult answer because people
3 have multiple responsibilities for both programs, the

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4 two programs I mentioned, TUPE and Safe and Drug Free
5 Schools.
6 Q. Let me try and ask it this way:
7 You mentioned that among your
8 responsibilities are the distribution of funds for
9 those two programs. Are you responsible for any
10 programs other than TUPE and Safe and Drug Free
11 Schools?
12 A. No.
13 Q. And, with regard to policy matters, are you
14 responsible for any programs other than TUPE and Safe
15 and Drug Free Schools?
16 A. No.
17 Q. So what are the areas of policy as to which
18 you have made or been responsible for recommendations
19 to the Superintendent in your role as Administrator of
20 the Healthy Kids Program Office?
21 A. We would recommend various contracts that
22 would be -- would fund activities to support the TUPE
23 Program or the Safe and Drug Free Schools Program. We
24 would recommend ways in which funding could be divided.
25 Q. The allocation of funding for those
26 programs?
27 A. Yes.
28 Q. Okay. Anything else that you do as a matter

1 of policy recommendation?
2 A. We would recommend perhaps ways of involving
3 the TUPE and Safe and Drug Free School Programs in
4 other areas, other programs within the department, such
5 as comprehensive school health or school safety.
6 Q. Any other policy areas in which you've been
7 involved?
8 A. Not that I can think of.
9 Q. Okay. Now, you mentioned that your duties
10 also include representing the Department of Education
11 on various committees. What committees are you
12 referring to?
13 A. The first committee would be the Tobacco
14 Education Research Oversight Committee, more commonly
15 known as TEROC, T-E-R-O-C. The second committee would
16 be the Next Generation Alliance for a tobacco-free
17 California, generally known as NGA. The third
18 committee would be the California Prevention Platform
19 Steering Committee. That's about it. Most other
20 committees would probably be ad hoc in nature.
21 Q. Have you participated in any ad hoc
22 committee groups?
23 A. Yes.
24 Q. Can you tell me what ad hoc committees
25 you've participated in?
26 A. Your questions follow a logical sequence.
27 Q. I'm trying to keep it simple.
28 A. Oh, boy. Let's see. There are work groups

1 that -- such as a Safe and Drug Free Schools work group
2 and a TUPE work group and an ad hoc committee dealing
3 with the California Healthy Kids Surveying, ad hoc
4 committees dealing with our publication called {Getting
5 Results}, which is a compilation of research on safe
6 and drug free schools and tobacco and other things, and

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7 there have been others. I just don't recall them right
8 now.
9 Q. Have you participated in any ad hoc
10 committees with representatives of the Department of
11 Health Services in matters pertaining to tobacco
12 control?
13 A. Yes.
14 Q. Okay. What are the -- what are those that
15 you can recall?
16 A. Mostly TEROC, and we do meet irregularly at
17 best, but...
18 Q. When you say, "we," whom do you mean?
19 A. The staff from the Department of Health
20 Services - Tobacco Control Section, some
21 representatives of that staff, and one or two -- me and
22 another representative from my office.
23 Q. And with whom do you have irregular -- with
24 whom from the Tobacco Control Section staff do you have
25 these meetings?
26 A. It varies. It could include Dileep Bal. I
27 believe you spell his name D-i-l-e-e-p and B-a-l.
28 Robin Shimizu. Phew. I think it's S-h-i-m-i-z-u.

1 Carol... I can't think of her last name right now.
2 MS. THRO: Russell.
3 THE WITNESS: Russell. Thank you.
4 MR. LERNER: Q. April Rosler.
5 A. April Rosler. Thank you. And then Jon
6 Lloyd, J-o-n his first name, and they had a recent
7 retiree of Bob Rupert who used to be there. Before
8 him, Michael Johnson. That's about all I can think of
9 right now.
10 Q. Have you -- has Colleen Stevens been at
11 these meetings?
12 A. Oh. Colleen Stevens, yes.
13 Q. Now, who else from Department of Education
14 has attended these irregular meetings with the Tobacco
15 Control Section staff?
16 A. Over the four years that I've been in the
17 office, Rae Kine has been the most frequent attender,
18 as that is one of her responsibilities is to serve as
19 liaison between her office and the Tobacco Control
20 Section of the Department of Health Services. Also in
21 attendance on occasion has been Wade Brynelson, the
22 Assistant Superintendent, I would think other staff in
23 our office over the four years, but I just can't recall
24 seeing -- in my mind, seeing a particular person there.
25 Q. You mentioned that the meetings are
26 irregular. What did you mean when you say they're
27 irregular? Is there no special agenda or -- regular
28 agenda or there are no regular times? What are you

1 referring to?
2 A. We try to schedule them quarterly and it
3 just doesn't seem to work, so that's what I mean by
4 "irregular."
5 Q. So it's the regular quarterly meeting that
6 doesn't happen on a quarterly basis?
7 A. Right. Right.
8 Q. Okay. Have there been printed agendas for
9 these meetings between the Department of Education and

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10 Tobacco Control Section staff?
11 A. I wish there were, but no. Generally, we
12 get to the meeting and people write things on a white
13 board to kind of identify what we're going to talk
14 about.
15 Q. And have there been minutes for these
16 meetings?
17 A. On occasion but, I don't believe, on a
18 regular basis.
19 Q. Are there any other ad hoc committees that
20 you can recall participating in as Administrator of the
21 Healthy Kids Program Office?
22 A. One came to mind. It was -- TEROC had a
23 committee in which they developed a -- a three-year
24 planning document and they just completed that task
25 again last year and I served on that, and then also
26 like about three years ago I served on that planning
27 document committee.
28 Q. Does the Healthy Kids Program Office have

1 responsibility within the Department of Education for
2 tobacco control education matters?
3 A. Yes.
4 Q. Is there any other office or persons
5 within -- to your knowledge, within the Department of
6 Education that has responsibility for tobacco control
7 education matters?
8 A. No.
9 Q. Other than people who are up the ladder from
10 you?
11 A. Yeah, I assumed that's what you meant.
12 Q. Okay. And prior to -- do you have knowledge
13 concerning responsibility within the Department of
14 Education for tobacco control education matters prior
15 to the time that you became Administrator of the
16 Healthy Kids Office?
17 A. No.
18 Q. So you don't know how the TUPE Program or
19 Safe and Drug Free Schools were administered before you
20 took --
21 A. No.
22 Q. -- the job?
23 A. (Shakes head.)
24 Q. Okay. Now, what are the policy matters
25 which the Healthy Kids Program Office has had
26 responsibility for formulating with regard to tobacco
27 control education since you've been the Administrator?
28 A. That's the same question I answered a few

1 minutes ago. Do you want me to say that again?
2 Q. Oh, I'm sorry. I understand. You mentioned
3 contract recommendations to support TUPE or the Safe
4 and Drug Free Schools Programs, allocation of funding,
5 ways of involving the TUPE and Safe and Drug Free
6 Schools Programs and other programs?
7 A. Yes.
8 Q. Does your office have any responsibility for
9 formulation of goals pertaining to tobacco control
10 education?
11 A. We have a -- our department has a planning
12 process which changes yearly, in my opinion, and each

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13 unit sets goals that are followed by the department
14 structure. Your question seemed to ask, though, about
15 policy in tobacco, and I would think we don't set goals
16 that way. We set goals on like are we going to have a
17 goal to publish a chapter of {Getting Results} or we
18 have a goal to reach more districts in administering
19 the Healthy Kids Survey. That's about the extent of
20 it. So I'm not sure if you're getting the answer you
21 want.
22 Q. Okay. Does your office -- well, strike
23 that. I think maybe the difference here is that you're
24 looking at this from the way you daily operate, and I'm
25 looking at it from a little bit more different angle,
26 so I do want to put this in your terms so we get on the
27 record what in fact does happen.
28 A. Okay.

1 Q. Now, with regard to contract
2 recommendations, what has been done by way of contract
3 recommendations since you've been Administrator that
4 pertain to tobacco control education?
5 A. We have a contract with the Alameda County
6 Office of Education to operate the California Healthy
7 Kids Resource Center. That actually -- that center was
8 actually in existence prior to my becoming the
9 Administrator of this unit, but through that contract,
10 I was able to change significantly the way in which
11 that resource center operates and the kinds of
12 reporting and accountability that was delivered through
13 that contract.
14 Also since I came there, we published a
15 document called {Getting Results}, through a contract,
16 and that contract was with HECC, H-E-C-C, which stands
17 for Health Education Communication Consultants, and
18 volume -- or Part I of {Getting Results} dealt with the
19 research literature that was available for Safe and
20 Drug Free Schools, with a small portion on tobacco
21 since tobacco is included in that federal legislation,
22 and then we did Part II, which was current research in
23 tobacco education, and we are currently working on
24 updates to both of those, one -- including -- well, one
25 including any research that's occurred since we did the
26 last two parts and we're doing one on having schools
27 look at all of the programs they've offered and then
28 seeing if they're offering programs that are in fact

1 research-based, and I forgot to mention we did one
2 update prior to the last two I mentioned, and that was
3 on youth development.
4 Another contract was the establishment of
5 the California Healthy Kids Program Dissemination
6 Center, and that contract is with the Los Angeles
7 County Office of Education.
8 Another contract is with Duerr and maybe
9 Duerr Evaluation & Associates or just Duerr &
10 Associates. I'm not certain. "Duerr" is D-u-e-r-r.
11 That contract is to evaluate the Tobacco Innovative and
12 Promising Projects.
13 And another contract is with West Ed,
14 capital "W" e-s-t and then capital "E" d, and they're
15 in San Francisco, and that contract is to develop and

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16 provide technical assistance for the implementation for
17 the California Healthy Kids Survey.
18 Oh. I think that's all the contracts that I
19 can think of.
20 Q. Now, these are contracts that have been
21 approved based on recommendations of the California
22 Healthy Kids Office?
23 A. Correct.
24 Q. Have there been any contract recommendations
25 that would have involved tobacco control education that
26 were made by the California Healthy Kids Office that
27 were not approved?
28 A. I don't think so.

1 Q. You've gotten what you've asked for?
2 A. Yes.
3 Q. Who had approval authority for these
4 contracts you mentioned?
5 A. Delaine Eastin has ultimate authority. I do
6 believe there's a delegation process so that she
7 doesn't review every contract, and so I would assume
8 that it stops with the Deputy, Kathy Lewis.
9 Q. So there was some written approval given by
10 someone higher than you in the department for each of
11 the contracts?
12 A. Oh, yeah.
13 Q. Before we began to discuss the contract
14 recommendations and the contracts you've just
15 enumerated, you mentioned that there is a planning
16 process by which each unit sets goals, and is that an
17 annual planning process?
18 A. Yes.
19 Q. And is it -- you mentioned that the process
20 changes yearly. What did you mean by that?
21 A. Well, it seems that time lines change;
22 formats change, and I suppose that's what I meant by
23 that.
24 Q. So you're referring to the procedures and
25 formats but not to the policy goals?
26 A. Correct.
27 Q. And with regard to the planning process,
28 what is it -- what kind of goals are established?

1 A. The two current goals are the two that I
2 mentioned earlier, one being for the Healthy Kids
3 Program Office to develop two updates to {Getting
4 Results}, one being a current review of the literature
5 and Safe and Drug Free Schools and tobacco industry
6 prevention education and the other being a review of
7 what programs are most commonly used in schools
8 compared to what programs does research support as
9 being effective, with steps recommended for schools as
10 to how they can move to a research-based program if
11 they're not there currently.
12 Q. And what type of programs are you referring
13 to? TUPE programs?
14 A. Both TUPE and Safe and Drug Free Schools.
15 Q. And, in that regard, programs aimed at goals
16 of smoking cessation or elimination of exposure to ETS?
17 A. I don't believe there's ever been any
18 mention of ETS in any of the goals that a school

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19 district might have or anything that we asked the
20 school district to do. Generally, it would be involved
21 with prevention activities to prevent youth from
22 starting alcohol, drugs, tobacco products, intervention
23 that if they are in a stage of experimentation that we
24 would want to intervene and hopefully provide them with
25 the kind of guidance and information they would need
26 not to continue experimentation and then those that are
27 using products, drugs, alcohol or tobacco, to cease
28 from using those products.

1 Q. And the two annual goals you mentioned were
2 the goals for the year 2000?
3 A. 2000-2001.
4 Q. Okay.
5 A. This school year. We -- our goals go more
6 on a school year as opposed to a calendar year so they
7 would be for July -- fiscal -- school fiscal year
8 July 1 of 2000 to June 30th of 2001.
9 Q. Okay. And what were the --
10 A. I didn't tell you the second goal. Do you
11 want --
12 Q. Oh, I'm sorry. You mentioned that the first
13 goal then was developing the two updates.
14 A. Right.
15 Q. Oh, I see. Okay. The second goal then?
16 A. I have to remember. Oh. The second goal is
17 to increase the use of the California Healthy Kids
18 Survey to approximately 625 districts and to increase
19 the use of the resiliency module and the elementary
20 school modules by 20 percent.
21 Q. When you say, "modules," do you mean the
22 modules of the survey?
23 A. Yes.
24 Q. What were the planning goals for the
25 1996-1997 school year?
26 A. I don't recall.
27 Q. Do you recall the goals for the 1997-'98
28 school year?

1 A. Not precisely, but I do believe that that
2 was the year we started with similar goals. One was to
3 implement the California Healthy Kids Survey and the
4 other was to publish the {Getting Results} document,
5 Part I, I believe, being Safe and Drug Free Schools.
6 Q. And what were the planning goals for the
7 1998-1999 school year?
8 A. I think that's the one you just asked me.
9 Q. I asked about '97-'98. Did you just answer
10 with reference to '98-'99?
11 A. I think I answered to '98-'99, yeah.
12 Q. Do you recall the goals then for 1997-1998?
13 A. No. '99-2000...
14 Q. And what are the goals for 1999-2000?
15 A. I believe that year we used -- doing --
16 making sure we published volume -- Part II, Safe and
17 Drug Free Schools -- or the tobacco portion of {Getting
18 Results} and the update. See, I can't recall exactly
19 which the goals were. I may have been correct in my
20 first answer to drop back one year, but there's -- they
21 all stay with the {Getting Results} document, and then

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22 last year our goal was to get the California Healthy
23 Kids Survey used in 400 districts as I best recall.
24 MR. LERNER: We'll mark this as Exhibit 1,
25 please.
26 (Whereupon, Defendants' Exhibit 4267 was
27 marked for identification.)
28 MR. LERNER: Q. Exhibit 4267 is a copy of a

1 Notice of your deposition together with a copy of the
2 Subpoena for you to testify, and have you seen this
3 Subpoena before?
4 A. I think so. It just seems -- looks
5 different to me than what I saw, but it could very well
6 be what I saw.
7 Q. Okay. You'll notice that the matters on
8 which you're to be examined under Item 2 of the
9 Subpoena -- would you review that paragraph, please.
10 A. Yes.
11 Q. And this is a little bit more of the kind of
12 theoretical topic of deposition as opposed to the way
13 it comes out operationally, but I was wondering... to
14 try to see if we could try to cut through some of this
15 more simply... does the Department of Education have
16 any programs that are used to inform students in
17 California of the health effects of the exposure to
18 environmental tobacco smoke?
19 A. No.
20 Q. Not specifically?
21 A. No.
22 Q. Okay. Does the Department of Education have
23 any -- set any methods of -- for educating students
24 concerning health effects of exposure to environmental
25 tobacco smoke?
26 A. No.
27 Q. And does the Department of Education have
28 any goals that would pertain specifically to educating

1 students concerning the health effects of exposure to
2 environmental tobacco smoke?
3 A. No.
4 Q. Has there ever been any discussion, to your
5 knowledge, within the Department of Education or
6 between the Department of Education and any other
7 government agencies concerning educational programs
8 that would educate students, specifically concerning
9 the health effects of exposure to environmental tobacco
10 smoke?
11 A. No, except that in various meetings over the
12 years I've been at, often environmental tobacco smoke
13 is mentioned but nothing with regard to what the
14 Department of Education should do or anything of that
15 nature.
16 Q. Has your office considered adopting any
17 goals, methods or programs to educate students
18 concerning the health effects of environmental tobacco
19 smoke?
20 A. No.
21 Q. Has there been any discussion on that topic?
22 A. No.
23 Q. You said that ETS has been mentioned in
24 various meetings over the years.

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25 A. Uh-huh.
26 Q. What are you referring to?
27 A. I just recall that in a very general way
28 that people have talked about environmental tobacco

1 smoke as being harmful, and it may be just what I've
2 seen on television and combined with general
3 conversations, but I mean I couldn't even cite any kind
4 of a meeting that it was brought up in. I just -- I
5 wouldn't...
6 Q. So you can't recall any discussion
7 concerning environmental tobacco smoke in any meetings
8 you had, for example, with staff of the Tobacco Control
9 Section?
10 A. No. I just thought of one if you want to
11 know.
12 Q. Sure.
13 A. It was at a TEROC meeting where they were
14 doing -- the media people were doing a media campaign,
15 showing us little snippets they had prepared. It was a
16 contractor that the Tobacco Control Section contracted
17 with, and it was a -- a media -- like a 60-second shot
18 or a 30-second shot or something like that on
19 environmental tobacco smoke. The best I recall, there
20 was a child, and somebody was smoking in the home or
21 something of that nature.
22 Q. Have you had any -- as Administrator of the
23 Healthy Kids Program Office, have you had any dealings
24 in any respect with the California Children and
25 Families Commission, which is responsible for
26 Proposition 10?
27 A. No, I have not. The department has.
28 Q. Do you know what dealings have been held in

1 that respect?
2 A. No, I don't.
3 Q. Do you know who in the department has had
4 dealings with the California Children and Families
5 Commission?
6 A. I think the Healthy Start Office did and
7 perhaps the Early Childhood Education Office, but I am
8 not positive about either of those.
9 Q. I take it that the Healthy Kids Program
10 Office does not have responsibility for the specific
11 contents of curricula used under the TUPE Program or
12 the Safe and Drug Free Schools Program; is that
13 correct?
14 A. Correct.
15 Q. Now, what role does the California Healthy
16 Kids Program Office play, if any, in the development of
17 curricula -- curricula materials for the TUPE Program
18 and for the Safe and Drug Free Schools Program?
19 A. We have never developed curriculum for
20 classroom use with our program. We have instead
21 supported the US Department of Education's principles
22 of effectiveness and asked and guided school districts
23 in adhering to those principles as well as the
24 principles for the Centers for Disease Control.
25 And the USDE's principles basically are to
26 assess the needs of their students, number one, number
27 two, to set measurable goals and objectives, three, use

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28 research-based programs, and four, evaluate what they

1 are doing so that we provide them with {Getting
2 Results}, which provides a background on research-based
3 programs. They can access the California Healthy Kids
4 Resource Center to look at a variety of curricula, but
5 it's all not there. There's some -- because they have
6 a peer review process, and so some things are there and
7 some aren't there, and that's about it.
8 Q. So if I could summarize: The Healthy Kids
9 Program Office provides a framework for tobacco control
10 education to be used with -- under TUPE Program and
11 Safe and Drug Free Schools Program grants?
12 A. Uh-huh.
13 Q. Is that correct?
14 A. (Nods head.)
15 Q. And that the choice of curriculum then --
16 and you also support the US Department of Education's
17 principles of effectiveness and the Centers for Disease
18 Control principles --
19 A. Uh-huh.
20 Q. -- concerning the manner and goals of
21 tobacco control education?
22 A. Yes. I believe that would be a fair way of
23 expressing it.
24 Q. Okay. And then the choice of a particular
25 curriculum is then made by the individual districts?
26 A. Correct, and their school boards.
27 Q. And the Healthy Kids Resource Center then
28 assists school districts, as requested, with curricula

1 for the programs?
2 A. Yes. They -- there's a catalog from the
3 Healthy Kids Resource Center, and school districts
4 can -- with knowledge of what the research says, with
5 the guidelines from the Centers for Disease Control,
6 US Department of Education, they then -- having
7 assessed the needs of their students and looked at the
8 various grade levels and the particular needs of the
9 populations they serve, they then would look at that
10 catalog and decide what curricula materials would be
11 useful for them to teach prevention intervention and
12 cessation of tobacco.
13 Q. So is it customary in California public
14 education for local districts to determine the contents
15 of specific curricula?
16 A. Yes, it is customary, and I believe it's the
17 law.
18 Q. So your office, as a result, would play no
19 role in dictating a curriculum for tobacco control
20 programs?
21 A. Yes. That's correct.
22 Q. Okay. So in that sense, the state
23 Department of Education facilitates a curriculum
24 presentation at the -- by the local districts?
25 A. Yes.
26 MR. LERNER: Okay. Could we take a
27 couple-minutes' break here?
28 THE WITNESS: Sure.

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1 MR. LERNER: Thank you.
2 (Recess taken 10:51 to 11:00)
3 MR. LERNER: Q. Could you please tell me
4 your business address?
5 A. 721 Capitol Mall, 3rd Floor. That's it.
6 Q. And you mentioned that Mr. Rupert had
7 retired?
8 A. Yes.
9 Q. Do you know where he is presently located?
10 A. No.
11 Q. When did he retire?
12 A. Four months ago.
13 Q. He had responsibilities for evaluation of --
14 program evaluation?
15 A. I think that's correct. He followed Michael
16 Johnson.
17 Q. Who presently has responsibility for program
18 evaluation?
19 A. As I understand it, Jon Lloyd.
20 Q. I'm going to go back and cover some of the
21 committee work you've done.
22 You mentioned that you've been a member of
23 TEROC; is that correct?
24 A. No.
25 Q. What has been your role with regard to
26 TEROC?
27 A. CDE, staff support to TEROC.
28 Q. Is there a CDE member on TEROC?

1 A. Yes, there is.
2 Q. Who is that?
3 A. Mr. Gus Dallas. He's appointed by
4 Superintendent Delaine Eastin.
5 Q. And you provide staff support to Mr. Dallas?
6 A. Yes.
7 Q. You seem a little hesitant with your "yes."
8 Is there some reason for that?
9 A. There's very little staff support that he
10 needs. He's been involved in this area for many years,
11 and generally the Department of Education gives a
12 report to TEROC at every meeting and it summarizes our
13 activities for a period of -- since the preceding
14 meeting, and frequently members will have a question as
15 to what CDE is doing, and we will always inform TEROC
16 of what we're doing so that -- because they are the
17 oversight committee.
18 Q. Have you attended TEROC meetings --
19 A. Yes.
20 Q. -- with Mr. Dallas?
21 A. He has been there as well, yes.
22 Q. Okay.
23 A. We haven't gone together, but he's there and
24 I'm there.
25 Q. What is Mr. Dallas' position?
26 A. I don't know his title, his official title.
27 I know he is an administrator in the Los Angeles County
28 Office of Education, and his office has responsibility

1 for the TUPE Program and the Safe and Drug Free Schools
2 Program and, I believe, other programs as well that are
3 related to school health issues.

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4 Q. Have you prepared reports to be submitted to
5 TEROC concerning the activities of the Department of
6 Education?
7 A. Yes.
8 Q. What reports have you prepared?
9 A. As I said, at each meeting, we submit a
10 small report, generally a page at the most, and those
11 reports usually summarize any of the contracts in which
12 we have engaged, RFAs that we've sent out, funding
13 allocations, that type of thing.
14 Q. Do you have any -- are there -- is there a
15 staff for TEROC?
16 A. I don't believe there's funding for a staff
17 for TEROC. However, the Department of Health Services'
18 Tobacco Control Section assists the Chairman of TEROC
19 in the preparation of the agenda and mailing of
20 materials to TEROC members and preparing handouts,
21 and...
22 Q. So when you submit a report to TEROC, do you
23 submit it to the Tobacco Control Section staff in
24 advance of these meetings?
25 A. Interesting question you ask because I think
26 that's how it should go, but no, we pretty well send
27 it -- no, I guess we do do that. Yeah. We send ours
28 to the Tobacco Control Section, and they put it into

1 the packets and distribute it for everybody. Right.
2 That's how it works.
3 Q. And how frequently does TEROC meet?
4 A. Quarterly.
5 Q. So you've done quarterly reports for TEROC
6 since you've been an administrator since May 1976?
7 A. Right.
8 Q. Have any of the quarterly reports dealt with
9 any issues pertaining to ETS?
10 A. I don't think so. No.
11 Q. Has there ever been any discussion at --
12 that you recall at TEROC pertaining to the work of the
13 Department of Education that relates in any way to ETS?
14 A. No.
15 Q. Has Mr. Dallas been the member appointed by
16 CDA to TEROC since you've been Administrator?
17 A. Yes.
18 MR. AGUILAR: CDE?
19 MR. LERNER: Q. CDE. I'm sorry.
20 A. Yes.
21 Q. Now, you mentioned that you also have
22 responsibilities with regard to the Next Generation
23 Alliance for a Tobacco-Free California. What are your
24 responsibilities in that regard?
25 A. I represent the department at their meetings
26 which occur -- they may be monthly, but it might be
27 bimonthly, too. I just don't recall.
28 Q. I'm sorry. I didn't want to interrupt you.

1 A. And I did serve for a brief time on a youth
2 committee that was and is defunct.
3 Q. An NGA youth committee?
4 A. Yeah, it was a subcommittee of NGA dealing
5 with youth issues.
6 Q. What is the "NGA"?

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7 A. The Next Generation Alliance for a Tobacco-
8 Free California. It grew out of a perceived need of
9 various state agencies and health organizations that
10 are statewide... for example, the American Lung
11 Association, American Cancer Society and others... to
12 continue meeting as an alliance following the passage
13 of Prop. 99, as I understand it. I was not around at
14 that time, but most of these -- many of these people
15 worked on that effort, and that's about it.
16 Q. Who are the members of the NGA?
17 A. The Department of Education and I represent
18 us at that meeting, the Department of Health Services'
19 Tobacco Control Section and they've had a variety of
20 people represent them there. Don Lyman, L-y-m-a-n, is
21 the physician, Dr. Don Lyman who generally represents
22 that department from the Tobacco Control Section
23 aspect. From another health office in representing a
24 higher level of administration is Mr. Jim Howard.
25 Q. From DHS?
26 A. Yes. The American Cancer Society is there
27 and American Lung Association. Lately that
28 representative has been Paul Knepprath,

1 K-n-e-p-p-r-a-t-h.
2 Q. Who is the representative of the American
3 Cancer Society?
4 A. I'm thinking. Alan Henderson, I believe,
5 and also -- oh, there's another woman that was there.
6 I can't think. There are some agencies and
7 organizations that end up with multiple
8 representatives. The California Medical Association,
9 they attend. The American Association of Retired
10 Persons, since the meeting's in their building, they
11 have a representative there.
12 Q. In the AARP building in Sacramento?
13 A. Yes. I can't recall. I mean there are
14 other people around the table, and I really don't
15 recall their organization affiliations.
16 Q. And are there agendas prepared -- written
17 agendas prepared for the meetings of the NGA?
18 A. Yes.
19 Q. And these are distributed to you before the
20 meetings?
21 A. Generally.
22 Q. Does NGA had a staff for the committee?
23 A. They used to.
24 Q. No longer?
25 A. They have one person trying to maintain the
26 office.
27 Q. Does the CDE contribute to the funding of
28 the NGA?

1 A. Not directly. We did support an effort of
2 the NGA to work with -- in striving towards having
3 tobacco-free communities in three -- the original plan,
4 I believe, was to have four or five tobacco-free
5 communities. It ended up being three communities
6 actually worked on that project under the leadership of
7 the NGA. So we provided some dollars to support some
8 of their staff to work on that effort.
9 Q. Were those dollars -- or was that funding

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10 arranged through your office?
11 A. Yes.
12 Q. So that would have been a special project?
13 A. Yes.
14 Q. When did that occur?
15 A. Let's see. It would have been -- it began
16 in '97.
17 Q. What were the three communities for which
18 this funding was made available?
19 A. I don't recall.
20 Q. And do you recall how much funding was made
21 available?
22 A. $200,000. I don't think they used it all,
23 by the way.
24 Q. And you've been attending NGA meetings since
25 you became Administrator of the California Healthy Kids
26 Office?
27 A. No, because it started, I -- I think it
28 started in like '97 or so.

1 Q. Does the committee you're talking about have
2 a name?
3 A. The committee?
4 Q. Well --
5 A. NGA?
6 Q. You attend -- NGA meetings are the meetings
7 you attend?
8 A. Yeah. Right.
9 Q. And you mentioned that you thought that the
10 NGA grew out of a need to continue meeting after the
11 passage of Prop. 99.
12 A. As I understand.
13 Q. Now, Prop. 99 was passed, of course, in
14 1988.
15 A. Yeah.
16 Q. So are you saying the NGA first got
17 organized in 1997?
18 A. I think these people met all the way along,
19 and then they finally put an application in to the
20 Robert Wood Johnson Foundation for funding, and so then
21 they received Robert Wood Johnson Foundation funding
22 and actually then organized as an NGA and were able to
23 employ staff.
24 Q. And is the NGA organized as a nonprofit
25 organization, to your knowledge?
26 A. I don't know for sure. I believe it is, but
27 I don't know for sure.
28 Q. Has ETS been a topic at any of the meetings

1 that you've attended of the NGA?
2 A. I don't recall it. I do recall one.
3 When the discussion had gone -- of smoke-
4 free bars came up, there was -- I mean I guess, if you
5 looked at environmental tobacco smoke in the broadest
6 sense, in that discussion, then, yes, they were talking
7 about tobacco-free -- or smoke-free -- tobacco --
8 smoke-free bars, I guess. I guess it wasn't tobacco-
9 free. It was smoke-free. So that in that respect, I
10 suppose that would be environmental tobacco smoke.
11 Q. And what is the purpose of the NGA?
12 A. Recently, they have asked themselves that

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13 question, and in the last meeting, it seemed to be a
14 sharing of ideas, communicating various efforts that
15 are going on, and striving to make California a
16 tobacco-free state. That's my understanding of their
17 purposes.
18 Q. And does NGA attempt to develop any policy?
19 A. Yes. They've had ongoing dialogue and plans
20 to come up with a strategic plan, and in response to
21 the Robert Wood Johnson, they prepare documents and
22 submit that, I suppose one could call it, as policies
23 of the NGA.
24 Q. And are there any policies of the NGA
25 pertaining to ETS --
26 A. I don't know. I don't know.
27 Q. -- other than the general purpose of trying
28 to make California smoke free?

1 A. I don't know.
2 Q. For example, has NGA, to your knowledge,
3 espoused any proposed legislation or educational
4 initiatives?
5 A. No, the NGA hasn't done anything like that
6 because they don't -- that I know of because they don't
7 have the wherewithal to accomplish something like that,
8 and then there was very specific discussions that they
9 couldn't take positions on legislation on behalf of
10 everybody sitting at the table because I, for one, have
11 no authority whatsoever to delegate Delaine Eastin's
12 position on legislation to anybody, so...
13 Q. And so what has NGA done, if anything, that
14 pertains to the purpose of making California a tobacco-
15 free state?
16 A. They fostered communication among people who
17 go to the meetings. They did meet with some success in
18 organizing three communities to further their efforts
19 in becoming tobacco-free communities. Beyond that,
20 you'd have to -- I think you'd have to look at the
21 documents that they have.
22 Q. Does NGA have any publications?
23 A. The minutes of the meetings. I can't recall
24 any publications beyond like meeting minutes or the
25 proposal for Robert Wood Johnson. They probably
26 share -- I mean they share sometimes in the agenda.
27 There's news articles and other items attached, but I
28 don't believe they do have any other types of

1 publications.
2 Q. To your knowledge, why is the Department of
3 Education represented on the NGA?
4 A. To my knowledge, the main reason is because
5 we administer the tobacco programs in schools, and
6 often times, the various people who come to those
7 meetings are interested in what are schools doing with
8 regard to tobacco prevention intervention and
9 cessation, and sometimes they will ask me specific
10 questions based upon something they saw or read. We
11 have shared with them {Getting Results}. We did a
12 small presentation on the California Healthy Kids
13 Survey that has generally been an information sharing
14 role.
15 Q. And have any suggestions been made at NGA

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16 meetings concerning educational programs that pertain
17 to -- that would pertain to environmental tobacco
18 smoke?
19 A. None that I recall.
20 Q. So as far as you recall, no one said schools
21 should be doing more to educate students concerning
22 environmental tobacco smoke?
23 A. I forgot how you started the question. I
24 don't know whether to answer "yes" or "no."
25 MR. LERNER: Go ahead and read it back.
26 (The preceding question was read back.)
27 THE WITNESS: Yes.
28 MR. LERNER: Q. And I mean no one at these

1 meetings.
2 A. Correct.
3 Q. And what is the California Prevention
4 Platform Steering Committee?
5 A. The Department of Alcohol and Drug
6 Prevention receives a portion of the federal dollars
7 that come to California through the Safe and Drug Free
8 Schools and Communities Act, which is actually Title IV
9 of Improving America's Schools Act. That is known as
10 the governor's portion. I believe they receive 20
11 percent of the funds. They use their dollars to
12 support local lead agencies much in the same manner as
13 we distribute our dollars to school districts. Those
14 agencies do drug and alcohol prevention predominantly
15 in various communities throughout California.
16 The local lead agencies and the leadership
17 in the Department of Alcohol and Drug Prevention
18 thought it a worthy project to develop a prevention
19 platform that was a policy statement, in my words, of
20 what prevention should look like in California with a
21 strong emphasis on youth development, which means
22 building resiliency in youth, developing their assets,
23 that type of thing, and so with a gathering of many
24 subgroups, that sort of thing, they wrote up this
25 prevention platform and many people, many
26 organizations, signed onto it. The original document
27 was in some -- at the extreme in a few places,
28 offensive to educators mostly because of the way in

1 which specific words were used.
2 In general, education was not given -- or
3 the role of education was not obvious in the document.
4 Therefore, it took about a year of further meetings in
5 which local educators were involved meeting with the
6 Department of Health Services, local lead agencies and
7 others in large groups so they could dialogue about the
8 language, and about four months ago or six months ago,
9 it was modified so that the language was acceptable to
10 educators and recognized that schools have a role in
11 alcohol and drug prevention in California, and as a
12 result, the California Department of Education, Delaine
13 Eastin, drafted a letter in support of the document as
14 did a growing number of county offices and school
15 districts.
16 Q. Is there a -- strike that.
17 Does the prevention platform include any
18 provisions pertaining to tobacco control matters?

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19 A. I don't recall. I would guess not, but I
20 don't recall.
21 MR. AGUILAR: Counsel, it's about 11:30.
22 MR. LERNER: Okay. Let's take a break until
23 1:00 o'clock.
24 MR. AGUILAR: Okay.
25 MR. LERNER: Thanks.
26 (Afternoon recess taken 11:28 to 1:06)
27 //////
28 //////

1 AFTERNOON SESSION - 1:06 PM
2 CONCLUDED EXAMINATION BY MR. LERNER
3 MR. LERNER: Q. This morning, you mentioned
4 that you do work with ad hoc committees, including a
5 work group on Safe and Drug Free Schools. Who are the
6 members of the Safe and Drug Free Schools work group?
7 A. Their group has evolved. We began with a
8 work group to -- that we brought together that were
9 local folks that I view as our customers, and we ask
10 them what they think of what we're doing and any plans
11 that we might have and to give us input as to what
12 they -- how they view things.
13 That work group consists of people from
14 local education agencies. We try to invite a variety
15 of people. We include, oh, county Offices of
16 Education, some of our local education agencies, school
17 district people, and other agency people who are
18 appropriate. Sometime -- and it's a combination
19 because everybody can't come, and so we end up with --
20 maybe somebody from other offices in the department
21 sometimes are there. Sometimes people from the
22 Department of Alcohol and Drug Prevention are there.
23 Q. Who has organized the Safe and Drug Free
24 Schools work group?
25 A. Our office does. Bruce Gordon, B-r-u-c-e,
26 G-o-r-d-o-n, a consultant in my office. He does the
27 staff work on it, and we also had a TUPE work group.
28 Lately, at the last two meetings, we have merged the

1 two because the membership is pretty much the same and
2 some of the issues are the same, and so we pretty well
3 merged the two into one.
4 Q. How long has the TUPE work group been in
5 existence?
6 A. I started it right after I got here
7 probably, so it's been about three-and-a-half years.
8 Q. So in 1996, it began?
9 A. I would imagine somewhere around there.
10 Q. And who are the members of the TUPE work
11 group?
12 A. Well, it's the same people I talked to
13 except I added like American Lung Association. They
14 had somebody. The cancer society had somebody and
15 Stanton & Glantz had somebody, a professor at the
16 University of California Medical Center - San Francisco
17 or his designee. That's about it. That's pretty much
18 the group -- oh -- and then somebody from Health
19 Services, somebody from the Tobacco Control Section
20 usually sits on it.
21 Q. And what is the purpose of the TUPE work

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22 group?
23 A. The same thing as Safe and Drug Free
24 Schools, except on TUPE, we try to share with them what
25 we do with our money, what we plan to do with the
26 money, any kinds of policy changes or ways in which
27 we're going to ask for money differently or changes to
28 the Request for Applications or anything like that so

1 that we get some input from a variety of people that
2 are our customers to tell us that won't work or we
3 recommend you do this because that's going to put an
4 undue burden on schools. We think you should do this.
5 You know, so there's a little body of people with which
6 we can bounce ideas off on.
7 Q. How often does the TUPE work group meet?
8 A. At the most, twice a year.
9 Q. Are there agendas for the work group
10 meetings?
11 A. Yeah. We try to get those out to them
12 before the meeting.
13 Q. And are there minutes of the TUPE work group
14 meetings?
15 A. Some meetings are better than others.
16 Q. Who is the representative of the American
17 Lung Association on the TUPE work group?
18 A. It was the predecessor to Paul Knepprath.
19 Tony...
20 Q. Najera?
21 A. Najera. Tony Najera, N-a-j-e-r-a.
22 Q. Is Paul Knepprath on the TUPE work group?
23 A. We haven't had a meeting since he's taken
24 over.
25 Q. When was the last meeting of the TUPE work
26 group?
27 A. They were combined. So it's a TUPE and Safe
28 and Drug Free Schools work group. Oh. Where are we

1 now? August. I'll bet the last meeting was April,
2 probably April of 2000.
3 Q. And how does one -- how does your office
4 communicate with the members of the combined TUPE-Safe
5 and Drug Free Schools work group? Is that done by an
6 E-mail service list?
7 A. No. I think we just send them a letter
8 saying -- inviting them to come to the meeting,
9 including an agenda.
10 Q. Are the local county TUPE coordinators
11 members of the work group?
12 A. A couple, not -- not all of them. There's
13 58 of them, so there's only a few.
14 Q. Which county coordinators are members of the
15 combined TUPE-Safe and Drug Free Schools work group?
16 A. I don't know. I'd have to get the list. I
17 just don't recall.
18 Q. Is Gus Dallas a member?
19 A. Yes.
20 Q. What members represent the Tobacco Control
21 Section on the combined work group?
22 A. Sometimes Carol Russell attends. I think
23 it's mostly been Carol.
24 Q. Does Colleen Stevens attend?

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25 A. No.
26 Q. And has the TUPE work group or the
27 combined -- present combined work group ever addressed
28 in any way the subject of ETS?

1 A. No.
2 Q. Has the TUPE work group or the combined work
3 group ever addressed the subject of tobacco control
4 curricula materials?
5 A. No. Except under the idea of the Healthy
6 Kids Resource Center, we've talked about that, whether
7 it's -- you know, is it working well? Is it meeting
8 people's needs?
9 Q. And what views have been expressed
10 concerning the efficacy of the Healthy Kids Resource
11 Center?
12 A. It seems to be working very well. It now
13 has a web page that people can access easily and with
14 mostly positive comments.
15 Q. Has the TUPE work group ever addressed the
16 subject of the deglamorization of tobacco use?
17 A. Yes.
18 Q. When was the -- when was that subject
19 addressed?
20 A. I couldn't tell you that.
21 Q. Would it be fair to say that that's one --
22 that has been a theme of tobacco control efforts by the
23 TUPE work group and the Safe and Drug Free Schools'
24 combined work group?
25 A. No.
26 Q. Has the Healthy Kids Program Office done any
27 work to advance the deglamorization of tobacco use?
28 A. Let's see. My response would be, no, in

1 that the curricula that's available through the Healthy
2 Kids Resource Center, some of it talks predominantly
3 about analyzing advertising that's done by tobacco
4 companies or others, and I have heard workshop
5 presentations of people discussing the kinds of models
6 and the colors and the use of layout and structure and
7 all those kinds of things, and so there's a lot of
8 that, and then there's a lot -- then I think what we
9 have talked about has been discussions about the
10 denormalization of tobacco use and that it is not
11 normal behavior to use tobacco products.
12 Q. So in your work in the Healthy Kids Program
13 Office, you make a distinction between denormalization
14 of tobacco use and deglamorization?
15 A. Yeah. I would, yeah.
16 Q. Okay. And what precisely do you see as the
17 difference in those two concepts as you've worked with
18 them?
19 A. Glamorization of tobacco use, in my mind,
20 would be the use of movie stars and people of means and
21 that kind of thing, use in films of using tobacco
22 products; whereas the denormalization of it would be
23 that young people see their peers and think that some
24 of them think that is normative behavior to use tobacco
25 products, and so through the use of sharing data with
26 children and they see based upon their own responses to
27 surveys that it is not normative behavior, that has a

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28 rather positive message to them, and they do then

1 realize that they're not different because they are not
2 using tobacco products.
3 Q. And what work has been done by the Healthy
4 Kids Program Office that pertains to denormalization of
5 tobacco use?
6 A. The promotion of the California Healthy Kids
7 Survey, which gathers data on health risk behaviors of
8 children, provides districts with that kind of
9 information, and they can compare that data to state
10 level and national level results so they can see pretty
11 much how the behaviors of their children compare to
12 state and national data.
13 I think, in {Getting Results}, we have some
14 information in the Tobacco Section on the
15 denormalization of tobacco use and, I think, in some of
16 the curricula that's available through the Healthy Kids
17 Resource Center and also through the -- some of the
18 Promising or Innovative Projects. I think they all
19 deal with it in -- you know, not all, but some of them
20 deal with it in some way or another, and so I suppose
21 those are the kinds of things that are out there.
22 Q. Now, you mentioned there is an ad hoc
23 committee that deals with the California Healthy Kids
24 Survey.
25 A. Right.
26 Q. When was that ad hoc committee formed?
27 A. As soon as we moved forward on developing
28 Healthy Kids Survey, which was a good three years ago

1 now.
2 Q. And who are the -- and has the committee
3 been in existence continuously since that time?
4 A. With slight changes in membership over time,
5 and...
6 Q. And is this a committee that is run by your
7 office?
8 A. No. The contractor pretty well runs that
9 committee.
10 Q. And who is that contractor again?
11 A. West Ed.
12 Q. And who from your office is on the
13 California Healthy Kids Survey Committee?
14 A. The consultant responsible for monitoring
15 that contract is Myra, M-y-r-a, Young, Y-o-u-n-g, and
16 she has the responsibility of monitoring the contract
17 and working on a day-to-day basis with the contractor.
18 She attends all those meetings. I have attended a few
19 of the meetings early -- in the very beginning stages,
20 I attended most of them, but I don't do that anymore,
21 and they don't meet regularly anymore. Now I think
22 it's once every year. In fact, I don't think they've
23 met this year, come to think of it.
24 Q. To your knowledge, has the Healthy Kids
25 Survey Committee ever addressed the subject of ETS?
26 A. I think they did, yes.
27 Q. What is your recollection in that regard?
28 A. I think there was dialogue over the kind of

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1 question to ask about student knowledge of the harms of
2 environmental tobacco smoke, but I just -- that's about
3 it. It could have been on -- I know they talked about
4 it, but I -- I'm sure they talked about it, but I just
5 can't think of what the issue was.
6 Q. Do you recall when the discussion concerning
7 the types of questions to ask relating to ETS took
8 place?
9 A. Probably very early on. Probably -- see,
10 the Healthy Kids Survey is made up of questions from
11 predominantly two other surveys -- the Youth Risk
12 Behavior Survey done by the Centers for Disease Control
13 and the CSS Survey done by the Attorney General's
14 Office, and as the questions were merged, rewritten and
15 adapted, there was dialogue over all of those questions
16 and it just -- to the best of my recollection, it just
17 does seem to me that there was some dialogue about an
18 environmental tobacco smoke question, but I just --
19 that's as far as I can go.
20 Q. Do you recall who was involved in that
21 particular dialogue?
22 A. No.
23 Q. Who serves on the California Healthy Kids
24 Survey Committee?
25 A. Greg Austin, G-r-e-g, A-u-s-t-i-n, is the
26 lead of the contract for West Ed, and so he is
27 predominantly the person who leads it. An assistant
28 of -- or a colleague of his, Norm Constentine, also

1 worked on it, and it's C-o-n-s-t-e-n-t-i-n-e.
2 In addition, there was a representative from
3 the Centers of Disease Control, Youth Risk Behavior
4 Survey Office, and I cannot think of her name right
5 now, and then there was a representative from the
6 Parent-Teachers Association of California. There were,
7 again, county Office of Education folks, local school
8 district people. Daphnie Hom, H-o-m, D-a-p-h-n-i-e,
9 from the Attorney General's Office, represented the
10 Attorney General's Office.
11 Q. Was there a representative from --
12 A. There were more. There were more people. I
13 mean it was a pretty big group.
14 Q. Were there any representatives from the
15 Tobacco Control Section of the Department of Health
16 Services?
17 A. I believe so, but I could not tell you who.
18 Actually, I think Michael Johnson early on attended --
19 yes, Michael Johnson early on attended those meetings,
20 yes, and I think he just got awfully busy and just
21 wanted to see the direction of it, and I think at that
22 point then he didn't come anymore, and nobody -- I
23 don't believe anybody came subsequent to Michael's
24 participation.
25 Q. Do any of the Healthy Kids Surveys that have
26 been -- well, step back a second.
27 Does your office or has your office
28 generated any survey materials as a result of the

1 Healthy Kids Survey Project?
2 A. My -- no. Our office doesn't develop
3 materials.

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4 Q. Have surveys been developed?
5 A. Yes.
6 Q. And when were those surveys developed?
7 A. The early surveys that went out to small
8 groups were -- went out about three years ago, just
9 there was a small initial group like a beta test group.
10 Q. And are there current editions of the
11 surveys?
12 A. Uh-huh. Yes.
13 Q. And are those posted on the website?
14 A. Yes, they are.
15 MR. LERNER: Let's go off the record for a
16 second.
17 (Brief pause in proceedings)
18 MR. LERNER: Okay. Let's mark this as the
19 Next in Order. Why don't we mark these consecutively
20 as the next set.
21 (Whereupon, Defendants' Exhibits 4268-4272
22 were marked for identification.)
23 MR. LERNER: Q. Mr. Kilbert, can you
24 identify Exhibit 4268, please?
25 A. Yeah. It's the elementary school version of
26 California Healthy Kids Survey.
27 Q. And can you identify Exhibit 4269?
28 A. It is the middle school version of the

1 California Healthy Kids Survey.
2 Q. Now, with regard to Exhibit 4269, I notice
3 on the cover page it comes from the California -- or
4 from the wested.org website; is that correct?
5 A. That's correct.
6 Q. And West Ed is the contractor who has
7 prepared these surveys for the Department of Education?
8 A. That's correct.
9 Q. Now, this edition at the top says Fall 1999
10 on the first page of the exhibit. Do you see that?
11 A. Not yet.
12 Q. Under Middle School.
13 A. Oh. I see, yes.
14 Q. Now, is that the most recent version of the
15 middle school version --
16 A. I don't know.
17 Q. -- of the survey?
18 A. I don't know.
19 Q. Okay.
20 A. Fall '99...
21 Q. Is it -- sorry.
22 A. I would think it's the most recent version
23 because we probably have another one for the fall of
24 2000 being prepared, so I would imagine this is the
25 most recent one, but I'm not absolutely certain.
26 Q. Okay. And this document, Exhibit 4269,
27 includes the Core Module A and Module B, which is the
28 extended tobacco supplement; is that correct?

1 A. I don't think so. I think this is just the
2 core of -- oh, there it is. I take it back. It is the
3 core and Module B, the tobacco supplement.
4 Q. Okay. Can you please identify Exhibit 4270,
5 please?
6 A. I think 4270 is just the introduction page

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7 on the website for the Table of Contents of the high
8 school survey.
9 Q. Okay. Then can you identify Exhibit 4271?
10 A. Exhibit 4271 is the high school survey,
11 California Healthy Kids Survey.
12 Q. And can you identify Exhibit 4272?
13 A. May I go back?
14 Q. Yes. Let me just direct your attention to
15 Exhibit 4270, which describes the high school survey as
16 consisting of Modules A through F, and I take it that
17 Exhibit 4271 is the high school survey including
18 Modules A through E; is that correct?
19 A. Yes. That's correct.
20 Q. And then Exhibit 4272 is Module F of the
21 high school survey?
22 A. Yes. That is correct.
23 Q. Now, are there any Healthy Kids Surveys,
24 editions of the California Healthy Kids Surveys, that
25 have been -- that were not published on the website?
26 A. My immediate answer would be, no, there are
27 no others. However, mistakes do happen and sometimes
28 it may not be there for one reason or another, but I

1 think every version of the survey that we have
2 contracted for is on the web page.
3 Q. And you have reviewed the wested.org
4 website?
5 A. Not in extreme detail, no, but I've been to
6 the website and seen what's on there.
7 Q. Okay. Now, do any of the questions in any
8 of the California Healthy Kids Surveys pertain to
9 environmental tobacco smoke?
10 A. I don't know.
11 Q. Do you know whether it's a goal of the
12 California Healthy Kids Survey to obtain information
13 concerning the prevalence of exposure of school
14 children to environmental tobacco smoke?
15 A. Would you please read that question to me.
16 MR. LERNER: Sure.
17 (The preceding question was read back.)
18 THE WITNESS: The survey... we never
19 referred to goals of the survey in terms of specific
20 kinds of questions.
21 What we tried to do was to -- is construct a
22 survey that would assess the health behaviors of
23 children in California, and that would provide a local
24 district database that they could compare to the state
25 level and the national level. So if questions were on
26 the California student survey, state level, or the YRBS
27 survey, national level, that dealt with environmental
28 tobacco smoke, then we would in all likelihood have

1 included a Healthy Kids Survey to be administered at
2 the district level or school level.
3 MR. LERNER: Q. Do you know whether --
4 well, I'll take that back. Does your office approve
5 the final versions of the California Healthy Kids
6 Surveys before they're distributed for use?
7 A. Yes.
8 Q. And who at your office has approval
9 responsibility for that?

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10 A. Me.
11 Q. And have you approved the versions of the
12 California Healthy Kids Surveys that have been marked
13 and identified as Exhibits 4268 through 4272?
14 A. Yes.
15 Q. Okay. Did you have any discussions with
16 anyone concerning whether questions should be included
17 in the surveys or in any of the surveys concerning
18 exposure to ETS?
19 A. Those discussions -- I'm going to start my
20 response over again. The -- in a word, yes, in that
21 those discussions took place at the advisory committee
22 meetings, and I had an opportunity at those meetings to
23 give input.
24 In general, the people that were at those
25 meetings were far more knowledgeable about
26 psychometrics than I was or even those that were
27 epidemiologists had greater sensitivity to the
28 construction of questions than I would have, and

1 therefore, I would acquiesce to their recommendations
2 and suggestions as opposed to trying to control the
3 direction or construction of particular questions, and
4 so often times, I had the -- so the -- in my -- from my
5 viewpoint, I had the opportunity to give input, and...
6 period.
7 Q. Okay. Are you able to say whether any of
8 the questions in any of the California Healthy Kids
9 Surveys that we've identified pertain to ETS exposure?
10 A. I couldn't do that now without looking at
11 them.
12 Q. And you don't recall whether any of the
13 questions was aimed at determining information
14 concerning ETS exposure?
15 A. I think there is, but I -- I would not swear
16 by it. I'm not certain.
17 Q. So you'd need to look at the questions?
18 A. Right.
19 MR. LERNER: Let's go off the record.
20 (Brief pause in proceedings 1:40 to 1:45)
21 MR. LERNER: Go back on the record.
22 Q. While we've been off the record,
23 Mr. Kilbert, have you had an opportunity to review
24 Exhibits 4268 through 4272?
25 A. Yes, I have.
26 Q. And, upon reviewing those exhibits, did you
27 note any questions that pertain in any way to exposure
28 to ETS?

1 A. No, I did not.
2 Q. Do you know why the California Healthy Kids
3 Surveys do not contain questions that pertain to
4 exposure to ETS?
5 A. I don't know precisely why, but the process
6 that we went through and that I described earlier may
7 be the reason, that there are no such questions on the
8 wire BS or there are no such questions on the CSS, or
9 during the dialogue with the California Healthy Kids
10 Survey Advisory Group, it was decided that we didn't
11 need that question for education program purposes.
12 Q. If you were going to inquire of your staff

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13 as to the reason that -- if any, that there are no
14 questions pertaining to ETS on these surveys, whom
15 would you ask?
16 A. Myra Young.
17 Q. And, to your knowledge, has there been any
18 call for the California Healthy Kids Survey to include
19 questions pertaining to ETS exposure?
20 A. Not to my knowledge.
21 Q. Do you know whether the -- you mentioned
22 that there is a new version of these surveys being
23 prepared for fall 2000.
24 A. Yes.
25 Q. Do you know whether any consideration has
26 been given to including questions on the new versions
27 of these surveys pertaining to ETS exposure?
28 A. No. I've not heard any discussions about

1 that at all.
2 Q. Who from your office is working on the
3 preparation of new versions of the survey?
4 A. Probably nobody. It's probably being worked
5 on solely at West Ed.
6 MR. LERNER: Let's go off the record for a
7 second.
8 (Brief pause in proceedings)
9 (Whereupon, Defendants' Exhibit 4273 was
10 marked for identification.)
11 MR. LERNER: Q. We've marked as
12 Exhibit 4273 a copy of {Getting Results - Part II}, and
13 can you identify this document, please?
14 A. Yes. This document is a copy of {Getting
15 Results - Part II}, the California action guide to
16 tobacco use, pretty much, and education.
17 Q. And this guide is published by the
18 California Department of Education; is that correct?
19 A. Yes, it is.
20 Q. And the preparation of this document was
21 supervised by your office?
22 A. Me, yes.
23 Q. And by you, personally?
24 A. Yes.
25 Q. And this document was published earlier this
26 year?
27 A. Yes.
28 Q. In what month?

1 A. Approximately February of 2000.
2 Q. Now, you mentioned that one of the annual
3 goals was the publication of {Getting Results -
4 Part II}; is that right?
5 A. Yes.
6 Q. Now, what was the purpose of the publication
7 of {Getting Results - Part II}?
8 A. The purpose was to be complementary to
9 Part I of {Getting Results}, and Part I of {Getting
10 Results} dealt with the Safe and Drug Free Schools and
11 Communities Act. This companion document was
12 constructed to be parallel to that Part I document.
13 So in this document, we tried to summarize
14 TUPE Program requirements and recommended guidelines
15 and then a variety of resources. We tried to give

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16 districts and county Offices of Education
17 recommendations for how they should design a
18 comprehensive tobacco program, and then we tried to
19 summarize the most current research that was available
20 in tobacco education, and then as we'd fund Promising
21 Projects, we included those as Promising.
22 Although they don't have a solid research
23 base, there's enough evaluation data that would tend to
24 suggest that some of these programs might be useful if
25 properly adapted to a district based upon the needs
26 they may have, and that way, when a district decides to
27 develop or review their tobacco program, this becomes a
28 working guide for them so they can meet the principles

1 of effectiveness and implement a quality program.
2 Q. Now, with regard to {Getting Results -
3 Part I}, did that document include any materials
4 pertaining to tobacco control education?
5 A. Yes, it did.
6 Q. What was included in Part I that pertained
7 to tobacco control education?
8 A. I'm not certain that I can tell you here
9 without looking at it, but there was a small section
10 that dealt with tobacco education because a federal
11 Safe and Drug Free Schools Act considers nicotine as a
12 drug, and therefore under a federal Safe and Drug Free
13 Schools and Communities Act, there would be some
14 reference to tobacco use.
15 Q. Now, there is an introduction to this -- or
16 a preface to this document at Pages Roman VII and VIII,
17 which you signed along with Kathy Lewis and Wade
18 Brynelson whom you earlier identified. Now, the
19 Acknowledgments are of various people at Pages Roman IX
20 and X. Are the persons who are identified in the
21 Acknowledgments people who were in a working group with
22 regard to the preparation of this document?
23 A. I do not think that all the people listed
24 under the Acknowledgments served in the working group
25 in the preparation of this document.
26 Q. You mentioned that there was an ad hoc
27 committee for {Getting Results}. Who was on the ad hoc
28 committee?

1 A. The four researchers that are identified on
2 Page Roman Numeral IX... Carol D'Onofrio -- that's
3 C-a-r-o-l, then "D," apostrophe, capital "O"
4 n-o-f-r-i-o -- and John Elder, E-l-d-e-r, Luanne
5 Rohrbach, L-u-a-n-n-e, R-o-h-r-b-a-c-h, and the final
6 researcher is Steve Sussman, S-u-s-s-m-a-n. They all
7 served on that committee. I attended that committee
8 meeting. Greg Wolfe from my office attended that
9 meeting. The two contractors Donna Lloyd-Kolkin --
10 that's L-l-o-y-d "hyphen" capital "K" o-l-k-i-n -- and
11 her colleague, Lisa Hunter, was at that meeting. Wade
12 Brynelson was at that meeting. I believe Myra Young
13 was at that meeting and Rae Kine, K-i-n-e, was at that
14 meeting. Then I think many of these other people
15 reviewed this document through the mail and the E-mail
16 and edited and commented.
17 Q. Was there any coordination between your
18 office and the Department of Health Services in the

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19 preparation of {Getting Results - Part II}?
20 A. We did send an earlier copy to them, earlier
21 drafts, but I, frankly, don't recall. I don't recall
22 much involvement. I just -- I really don't recall much
23 involvement. I'm -- now I'm even questioning myself
24 whether or not we actually sent the earlier drafts to
25 them. I'm not sure. I just can't tell you.
26 Q. Are the operations of your office funded in
27 any way with Prop. 99 funds?
28 A. Yes.

1 Q. Okay. To what -- how is that -- are there
2 other sources of funding for your office as well?
3 A. Not for the tobacco activities. Those are
4 funded solely out of Prop. 99 Tobacco-Use Prevention
5 Education funding. For the Safe and Drug Free Schools'
6 responsibilities, that's funded out of the federal
7 Title IV of IASS, the Safe and Drug Free Schools and
8 Communities Act.
9 Q. Would it be fair to say the work of your
10 office and the work of the contractors in producing
11 {Getting Results - Part II} were funded with
12 appropriations of Prop. 99 funds?
13 A. Correct.
14 Q. That came from the Tobacco and Research
15 Education Account?
16 A. Correct.
17 Q. Now I'm going to ask you about some certain
18 statements in {Getting Results - Part II} and ask for
19 certain -- ask you to comment in certain ways on them.
20 The section -- the first chapter contains a
21 section called Tobacco Control, a Statewide
22 Perspective, beginning on Page 2. At the bottom of
23 Page 2 is a statement. "All projects funded by DHS
24 address four priority areas: (1) eliminating exposure
25 to secondhand smoke."
26 Now, is this information you put in this
27 brochure for the audience of school districts that
28 would make use of this document?

1 A. Yes.
2 Q. And what is the purpose of informing the
3 prospective audience of this document that DHS has as
4 its first priority eliminating exposure to secondhand
5 smoke?
6 A. I think, at the time, the reason we included
7 this entire reference here to Department of Health
8 Services was in the spirit of interagency
9 collaboration, and so as the preceding paragraph starts
10 out -- it describes what their responsibilities are.
11 It gives a whole statewide perspective, and therefore,
12 the Department of Health Services is very significant
13 in the tobacco efforts of California. So it describes
14 that, and then it describes the -- apparently the four
15 priorities that they provided to us as to their
16 priorities, and then it talks about programs that were
17 funded that are relevant to school-based programs.
18 So the idea is that the Department of
19 Education doesn't do this alone, and so the graph up on
20 the top of Page 3 tries to show what we do, what the
21 Department of Health Services does and what the

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22 University of California Tobacco-Related Disease
23 Research Programs do TRDRP. The point was solely
24 informative.
25 Q. Okay. So it was not to -- this is not to
26 say that priorities of DHS with regard to tobacco
27 control are the same as the priorities of the
28 Department of Education?

1 A. No. In no way was that the intention.
2 Q. Okay. Now, earlier in this same section on
3 Page 2 there is a statement with regard to Prop. 99.
4 "These tax revenues are being used to
5 support the efforts of California's tobacco control
6 program to denormalize --"
7 A. Excuse me. I'm lost.
8 Q. That's at the second sentence under the
9 Tobacco Control Section.
10 A. Oh. Okay. Let me read it once more.
11 Q. Well, let me read it into the record.
12 A. Oh, okay.
13 Q. "These tax revenues are being used to
14 support the efforts of California's tobacco control
15 program to denormalize the use of tobacco - to alter
16 the social and legal environment so that tobacco use is
17 considered undesirable," and then the next paragraph
18 says, "The tobacco control program involves the
19 schools," and so forth.
20 Is the efforts -- would it be fair to say
21 that the TUPE Program is a program that was implemented
22 to support the efforts of the tobacco control program
23 to denormalize the use of tobacco as described here?
24 A. I think that's one objective of it, yes.
25 Q. What are the other objectives of the TUPE
26 Program?
27 A. Well, I don't know if we identify them all
28 in here -- we probably do -- but I suppose that another

1 would be to teach young people about the physiological
2 effects of tobacco use. Another would be to teach
3 young people about resiliency to not only tobacco but
4 other harmful drugs or alcohol products that would not
5 be helpful.
6 Q. What do you mean by "resiliency"?
7 A. The ability of a young person to resist
8 approaches from others to participate in using products
9 that would be harmful to their health.
10 Q. Now, Figure 1 on Page 3 has a column called
11 California Department of Education Healthy Kids Program
12 Office. Do you see that?
13 A. Yes, I do.
14 Q. And what is -- what are the items that are
15 listed in the bullet points in that left-hand column?
16 A. The first bullet point is Grades 4 through 8
17 Entitlement Program. The second is the Grades 9
18 through 12 Competitive Grant Program.
19 Q. What is the Grades 4 through 8 Entitlement
20 Program?
21 A. That is, we take a portion of the resources
22 that come to our department, and we distribute them on
23 an, I believe, ADA basis.
24 Q. That's "average daily attendance"?

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25 A. An average daily attendance basis.
26 One of our plots -- and I've been there four
27 years and I cannot get this straight, but Safe and Drug
28 Free Schools, I think, is distributed on enrollment and

1 I believe TUPE is distributed on an ADA basis, and
2 those are different bases, so I believe this is by an
3 ADA basis.
4 Q. Would it be fair to say that the Grades 4 to
5 8 Entitlement Program is a program for funding tobacco
6 control education in Grades 4 through 8 in local
7 districts?
8 A. Yes.
9 Q. And the funding for that is determined based
10 on average daily attendance in the various districts
11 and other requirements?
12 A. Correct.
13 Q. Okay. And what is the Grades 9 through 12
14 Competitive Grant Program?
15 A. We don't have enough money to provide an
16 equal level of support to all the Grades 9 through 12
17 students in California. So we have a competitive grant
18 process so they can apply and complete a response to a
19 Request for Applications and those are read, ranked and
20 then funded.
21 Q. That is, the school districts can apply for
22 money for Grades 9 through 12 for tobacco control
23 education programs in their districts?
24 A. Yes.
25 Q. And what is the Promising and Innovative
26 Grant Program?
27 A. A small portion of money that's set aside
28 that if a particular school district or county Office

1 of Education has an idea that they think would be an
2 effective way of reaching young people that they then
3 can apply for funding to support that idea they build;
4 evaluation must be built in and that sort of thing, and
5 then they apply. We rank those proposals and fund
6 those as well.
7 Q. The funding for the Grade 4 through 8
8 Entitlement Program is all generated by Prop. 99 funds;
9 is that correct?
10 A. Yes.
11 Q. And is the same true for the Grades 9
12 through 12 Competitive Grant Program?
13 A. Yes.
14 Q. And is the same true for the Promising and
15 Innovative Grant Program?
16 A. Yes.
17 Q. What is the Indiana Education Centers
18 Competitive Grant Program?
19 A. The TUPE law requires us to distribute a
20 portion of the dollars to Indian Education Centers, and
21 the number of Indian Education Centers in California
22 has increased, I believe, over time, and there are now,
23 I believe, around, oh, 30 -- I want to say 38, but it
24 could have been 28 Indian Education Centers, and so
25 there was a small amount of money amounting to about
26 $200,000 and they can apply to use funds to do tobacco
27 prevention, intervention and cessation activities at

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28 their Indian Education Centers.

1 Q. And by "Indian," we mean Native Americans?
2 A. Yes, we do.
3 Q. Now, with regard to -- how many school
4 districts are there in California?
5 A. 1,053 give or take, depending upon the day
6 of the week.
7 Q. And how many school districts receive
8 Grades 4 through 8 entitlement funding?
9 A. Oh, boy. I don't have the exact number.
10 Q. Do you have an approximate number?
11 A. I would estimate that about 400 receive it,
12 Grades 4 through 8 entitlement money. Those would have
13 to be unified school districts or elementary school
14 districts.
15 Q. And of the school districts that do not
16 receive Grades 4 through 8 entitlement funding, how
17 many have students in Grades 4 through 8?
18 A. The rest.
19 Q. So --
20 A. I don't know.
21 Q. Do you know offhand?
22 A. I wish I knew.
23 Q. Are there some districts, some school
24 districts, that don't?
25 A. Oh, yeah. There are union high school
26 districts that have no Grades 4 through 8 students. So
27 that data is available. It's on the CDE web page and
28 it's also in a data book, but I...

1 Q. So if we went to the CDE web page, we'd be
2 able to determine how many districts --
3 A. Yes.
4 Q. -- receive this --
5 A. Yes.
6 Q. -- and how many are eligible to receive
7 this? And there are eligible school districts that do
8 not receive Grades 4 through 8 Entitlement Program
9 funding?
10 A. Yes, there are.
11 Q. And do you know how many eligible districts
12 do not receive Grades 4 through 8 entitlement funding?
13 A. No, I don't.
14 Q. Do you know the reason or any reasons that
15 there are districts that do not receive Grades 4
16 through 8 funding?
17 A. The major -- I'm sorry. I was going to
18 answer your question before I listened to all of it.
19 I'm sorry.
20 Q. Do you know the reason that there are
21 eligible districts that don't receive that funding?
22 A. Yes, I know there are reasons.
23 Q. Okay. What are the reasons?
24 A. The predominant reason is that the number of
25 dollars per student in small districts is so small that
26 the paper requirements in order to acquire those
27 dollars are way in excess of the value of getting the
28 money, so they'd just as soon not participate.

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They do have an option, however, and that is the joint cooperative, and some of them are very independent and would rather not be part of a cooperative, and so they choose to just not receive the money.

Q. And that's not to say that districts that do not -- the eligible districts that do not receive the money do not have tobacco control education programs?

A. Correct.

Q. Okay. And do county education offices ever assist, to your knowledge, in obtaining entitlement funds for small districts?

A. I hope that, in every case, they do assist. That is their responsibility, and we do ask them to assist.

Q. Okay. Now, how many districts are eligible for Grades 9 through 12 competitive grant funding?

A. All of the union high school districts and all of the unified school districts that have Grades 9 through 12 in them.

Q. And how many of the eligible districts receive Grades 9 through 12 competitive grant funding?

A. It varies depending upon year by year, and it ranges from a small of 58 to 60 districts in some years all the way up to about 225.

Q. Okay. The Indian Education Centers are also funded with Prop. 99 moneys?

A. For Tobacco-Use Prevention Education

Programs, yes.

Q. Okay. What is the School Academic Research Awards?

A. That is a new effort we negotiated recently with the University of California TRDRP Program which we talked about earlier, which is the Tobacco-Related Disease Research Program, and my concern with the efforts of the University of California in that is that most of the research has been done by epidemiologists that are interested in physical effects of tobacco products on cells in the body and on -- and other physiological effects, and there has been very little research, quality academic research, on particular strategies that are effective with children in school at all grade levels, and as a result, I asked if they would be interested in particularly funding some research that would help schools in understanding what might be the best strategies to use with children, and they agreed.

In the first year, nothing was funded because the standards set by the University of California are very high in regards to the research design and methodology. So it took us another year of applications, and I believe this year we have one that finally was approved by the University of California review board, and we have one that is going to be in a planning year as they further develop their research model and design.

Q. What is the nature of the study that has now been approved?

A. It deals with smoking cessation, and it

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4 is -- I believe it's the effectiveness of a medication
5 in the cessation of tobacco among school-aged youth,
6 and it has a number of independent variables that they
7 would use and then doing multiple progression analyses
8 to determine which had the most -- had the greatest
9 impact in the effectiveness of using that medication.
10 Q. To your knowledge, has any work been done in
11 which your office has been involved in any way that
12 relates to the effectiveness of any curricula materials
13 pertaining to tobacco control?
14 A. No.
15 Q. How has --
16 A. Well, wait a minute. Let me think about
17 this before -- let me think once more about this before
18 I go on.
19 Q. Well, let me maybe simplify the question.
20 A. Okay.
21 Q. Has there been any effort to determine the
22 effectiveness of tobacco control curricula materials
23 which your office has been involved in?
24 A. Only through {Getting Results} in which we
25 have looked at what the research says makes effective
26 tobacco programs.
27 Q. Okay. We'll determine that a little bit.
28 What is the Discretionary Projects item

1 figure listed in Figure 1?
2 A. That's some of the projects we talked about
3 earlier... the California Healthy Kids Survey, the
4 California Healthy Kids Program Dissemination Center,
5 the California Healthy Kids Resource Center, the Duerr
6 Evaluation of the Promising and Innovative Projects,
7 {Getting Results - Part II}, and I think I ran out.
8 That's all I can recall right now.
9 Q. And the discretionary projects are also
10 funded with Prop. 99 funds?
11 A. Not in their entirety because they service
12 Safe and Drug Free Schools as well, and for example, in
13 the Healthy Kids Resource Center, they service
14 nutrition programs, HIV/AIDS, safe schools, other
15 programs so that other programs within the department
16 help support that effort.
17 Q. Okay. We talked about the California
18 Healthy Kids Survey and the -- you've mentioned the
19 California Healthy Kids Resource Center.
20 Is there a tobacco education -- or tobacco
21 control education aspect to the work of the California
22 Healthy Kids Resource Center?
23 A. Would you please read that or tell it to me?
24 Q. Yes. Does the California Healthy Kids
25 Resource Center do any work on tobacco control matters?
26 A. No. Their responsibility is merely to have
27 material available on the shelves that's commonly used
28 material in tobacco programs and then to make that

1 available to school districts to select what it is they
2 want to use.
3 Q. Does the Healthy Kids Resource Center
4 receive Prop. 99 funding?
5 A. Yes.
6 Q. And what is the purpose of the Prop. 99

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7 funding that it receives?
8 A. To put the materials on the shelves and have
9 somebody there that can receive the requests and
10 publish the catalog and then send it out so people can
11 review it, and then receive it back and make sure it's
12 in good shape and put it...
13 Q. And that worked -- and the Prop. 99 funding
14 for the Healthy Kids Resource Center is aimed at the
15 selection, publication, distribution of tobacco control
16 education materials?
17 A. Right.
18 Q. What is the California Healthy Kids Program
19 Dissemination Center?
20 A. That is a center that we fund through a
21 contract with the Los Angeles County Office of
22 Education, and that center has developed a database of
23 programs that are quality tobacco prevention,
24 intervention or cessation programs and safe schools,
25 drug programs, alcohol prevention programs throughout
26 California, and they've put them in a database that can
27 be searched by title, by strategy, by type of district
28 and a number of other variables.

1 And they also are establishing a list of
2 consultants who are knowledgeable about these programs
3 with the intent that, should someone want to do
4 something that's research-based that they've read about
5 in {Getting Results} or elsewhere, they can contact the
6 dissemination center. They would tell them where
7 there's such a program in the vicinity of their locale,
8 and then these folks can go observe a program.
9 They also do workshops/showcases on the
10 Innovative and Promising Programs so that people can
11 see what's going on in these projects and so they can
12 better understand what some of the opportunities are.
13 Q. Where is the dissemination center located?
14 A. The program dissemination center is located
15 in the Los Angeles County Office of Education. I think
16 they're on Downey Avenue in LA.
17 Q. Does Dr. Dallas have anything to do with the
18 dissemination center?
19 A. Yeah. He's the Project Director.
20 Q. To your knowledge, was the dissemination
21 center established with Proposition 99 funds?
22 A. Yes.
23 Q. And when did that occur?
24 A. Well, excuse me. I'd like to go back and
25 explain that first question.
26 Yes, it was established partially with
27 Prop. 99 funds, and the other pot of money used in
28 there is Safe and Drug Free Schools' funds, for those

1 programs, and when was it done? Nineteen Ninety... I
2 think we started negotiating setting up the contract in
3 late '98.
4 Q. To your knowledge, has the dissemination
5 center done any work that pertains to ETS exposure?
6 A. No.
7 Q. Do you know whether they have done any work
8 that relates to educational programs or research
9 connected with reducing ETS exposure?

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10 A. No, I don't. I don't know that it's
11 possible, but -- I don't know.
12 Q. I'd like you to take a look, please, at
13 Page 4 of {Getting Results - Part II}, Exhibit 4273.
14 A. Okay.
15 Q. Can you tell me what this page represents?
16 A. These, I believe, are the recommendations of
17 the TEROC Committee, Tobacco Education Research
18 Oversight Committee, in that planning document that I
19 referred earlier today for 1997 through '99.
20 (Ms. Thro leaves the room.)
21 MR. LERNER: Q. So the tobacco -- as you
22 mentioned earlier, the TEROC has oversight
23 responsibility for the statewide tobacco control
24 program?
25 A. Yes. That's correct.
26 Q. And the recommendations of the TEROC then
27 are, in a sense, policy to help guide the organizations
28 within the state program?

1 A. That's correct.
2 Q. Okay. Then Item 2 of the Recommendations on
3 Page 4 is press for smoke-free workplaces and homes.
4 A. Uh-huh.
5 Q. It mentions secondhand smoke as the third
6 leading cause of preventable death in the nation.
7 Attempts by the industry to limit smoke-free
8 workplace restrictions must be fought, and efforts to
9 educate employers and employees concerning the right to
10 a smoke-free workplace need to be intensified. Efforts
11 must be continued to educate families about the threat
12 posed to their children by tobacco smoke at home.
13 Has any work been done or facilitated by the
14 Healthy Kids Program Office to advance the goals
15 mentioned in that paragraph?
16 A. No.
17 Q. Nothing specific?
18 A. (Shakes head.)
19 Q. Paragraph 4 on Page 4, which is the TEROC
20 recommendation says, "Strength school-based tobacco use
21 prevention education programs consistent with emerging
22 research. Because tobacco prevention is only one of a
23 multiplicity of goals schools must fulfill in their
24 limited time with students; strategies must be
25 efficient and effective. Schools should carefully
26 select tobacco use prevention education programs and
27 activities that had been evaluated and shown to work.
28 Tobacco-free school policies must be - must also be

1 enforced."
2 Has the Healthy Kids Program Office done any
3 work to advance the recommendations that I just read?
4 A. Yes, we have.
5 Q. And what has been done?
6 A. We began work on {Getting Results} to gather
7 the research that is available in tobacco prevention
8 programs. We established the Healthy Kids Resource
9 Center as a source of curricula materials available
10 from which schools could select to meet their needs.
11 We established the California Healthy Kids
12 Program Dissemination Center so that school districts

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13 could see other programs and be knowledgeable of other
14 programs that are operational.
15 We established the California Healthy Kids
16 Survey so that they can survey their students to better
17 understand the health behaviors of their children and
18 design programs appropriate to meet their needs.
19 And with regard to the last sentence, we
20 continually encourage every district in California to
21 be tobacco free in all facilities on the school
22 property, in any vehicle at any time, and we've been
23 successful in that respect because, of the 1,053
24 districts, we are down to somewheres around 30
25 districts that have not been certified as being tobacco
26 free.
27 (Ms. Thro rejoins the proceedings.)
28 MR. LERNER: Q. Do you know when the effort

1 began to make schools tobacco free?
2 A. No.
3 Q. Was it before you became --
4 A. Yes.
5 Q. -- Administrator of the Healthy Kids Program
6 Office?
7 A. Yes.
8 Q. Do you know whether there are any schools in
9 Los Angeles or any districts in Los Angeles that have
10 not been certified as "tobacco free"?
11 A. I don't know that for sure.
12 Q. Okay.
13 A. They're generally very small districts that
14 are not tobacco free, and Los Angeles County does have
15 some very small districts, so it's possible.
16 Are you going to move on to something
17 different?
18 Q. In a moment.
19 A. Could I take a little break?
20 MR. LERNER: Absolutely.
21 THE WITNESS: I need a drink of water.
22 MR. LERNER: Sorry. Let's take a little
23 break.
24 (Recess taken 2:30 to 2:37)
25 (Ms. Thro is not present.)
26 MR. LERNER: Q. Now, {Getting Results -
27 Part II} contains Table 3 showing CDC guidelines at
28 Pages 23 and 24, and what was the reason that the CDC

1 guidelines are included in this document?
2 A. The Centers for Disease Control has a long
3 and respectful history of knowledge they share with
4 regard to tobacco, drugs, alcohol, and other -- other
5 products, and the Centers for Disease Control does have
6 guidelines for tobacco prevention programs, and the
7 Department of Education used those guidelines for a
8 number of years as the only guidelines available.
9 These guidelines were written quite some time ago, and
10 as I recall, it's something like back in 1990, but I'm
11 not sure of exact --
12 Q. Page 23 references 1994. Is that your
13 recollection?
14 A. Oh, okay. There we go. 1994.
15 Well, wait a minute. That's the

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16 developmentally appropriate knowledge and skills.
17 That's not the guidelines.
18 Q. Well, they're California guidelines; is that
19 right?
20 A. Yeah. What you have here is -- we looked at
21 the guidelines from the Centers for Disease Control
22 since -- and I do think it was earlier than '94, but I
23 think it was back in '90, but it could have been '94,
24 and they were -- they didn't address all of the things
25 that were going on in California. So we incorporated
26 them into these guidelines for California, and that's
27 why we call them the California guidelines for tobacco
28 and prevention, and there's -- some of the changes are

1 like designing a program, responsive local needs that
2 are based on national principles of effectiveness.
3 Well, the principles of effectiveness are not mentioned
4 in the CDC guidelines. So we included those here.
5 (Ms. Thro rejoins the proceedings.)
6 MR. LERNER: Q. Now, where are the
7 California guidelines that you're referring to?
8 A. Starting on Page 21 and going to Page 29.
9 Q. Okay. Then one of the California guidelines
10 is -- or Number 3 is at Page 22. "Provide
11 developmentally appropriate tobacco use prevention
12 education in Kindergarten through Grade 12."
13 A. Yes.
14 Q. "This instruction should be especially
15 intensive in junior high or middle school and should be
16 reinforced in high school."
17 A. Right.
18 Q. So that's one of the California guidelines?
19 A. Yeah, but it's also a CDC guideline.
20 Q. All right.
21 A. And you'll notice that it talked about
22 Kindergarten through Grade 12, and we only have enough
23 funding to do Grades 4 through 8 with that Entitlement
24 Program and then a Competitive Grant for 9 through 12.
25 So the CDC guideline would like to see it far more
26 comprehensive. We would, too, but the only resources
27 the district would have would be their general fund to
28 do that.

1 Q. Right. Now, one of the explanatory points
2 under the guideline we just quoted from Page 22 was --
3 is "provide developmentally appropriate instruction in
4 Kindergarten through Grade 12," and then Table 3 is --
5 which is at Pages 23 and 24 contains information
6 concerning developmentally appropriate instructional
7 matters.
8 A. Correct.
9 Q. Now, where does Table 3 come from?
10 A. I believe the Centers for Disease Control
11 published Table 3.
12 Q. Okay. And that was -- and why was that
13 incorporated into this document?
14 A. Probably to explain the third guideline.
15 Q. So on Page 23, there are several columns
16 which, I guess, describe knowledge which is
17 developmentally appropriate to be imparted at
18 particular grade levels to students?

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19 A. That's correct.
20 Q. Then one of the items that is appropriate
21 then to teach in early elementary school is that
22 tobacco smoke in the air is dangerous to anyone who
23 breathes it; is that right?
24 A. That's correct.
25 Q. Okay. To your knowledge, is that a matter
26 that is included in curricula materials used in
27 California public schools?
28 A. Depending upon the materials, yes. I'm sure

1 it's in -- somewhere in there, right.
2 Q. All right. Then with regard to later
3 elementary school, one of the items that this table
4 shows it's developmentally appropriate to teach is that
5 environmental tobacco smoke is dangerous to health.
6 To your knowledge, is that a matter that is
7 included or imparted by curricula materials used in the
8 California public schools at those grade levels?
9 A. I would imagine that some of the curricula
10 includes that. I couldn't be specific as to which ones
11 or anything like that.
12 Q. Have you reviewed any curricula materials to
13 determine the extent to which they're congruent with
14 the CDC developmentally appropriate instructional
15 matters?
16 A. No. No, I have not.
17 Q. Who in your office may have done such a
18 review?
19 A. I don't think anyone would have.
20 Q. Is that something that would be done by the
21 Healthy Kids Resource Center?
22 A. Yes. More likely, they would determine
23 whether it's developmentally appropriate or whether it
24 does meet the guidelines, CDC guidelines, California
25 guidelines, uh-huh.
26 Q. All right. And then with regard to middle
27 and junior high school, one of the developmentally
28 appropriate items to teach is that maintaining a

1 tobacco-free environment has health benefits.
2 That's about the --
3 A. Yes, I see it.
4 Q. -- second bullet point. Do you see it?
5 A. Correct.
6 Q. And, with regard to senior high school, one
7 of the developmentally appropriate matters to teach is
8 that tobacco use during pregnancy has harmful effects
9 on the fetus?
10 A. Yes.
11 Q. And that schools and community organizations
12 can promote a smoke-free environment?
13 A. Yes.
14 Q. So these are elements of the CDC guidelines
15 that are concepts that at one time or another during
16 the school year it's developmentally appropriate to
17 teach to young people?
18 A. Yes.
19 Q. And then on Page 24 of the CDC -- the table
20 concerning the CDC developmentally appropriate matter,
21 instructional knowledge, attitudes and skills, has a

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22 section that deals with "attitudes that students will
23 demonstrate." What is meant by that, do you know?
24 A. Well, contrasting that to the prior one
25 which is cognitive skill and knowledge of knowing a
26 particular fact and knowing a particular content,
27 attitude is more how you feel about things, where it
28 gets to feelings of young people, their attitudes

1 towards others and different behaviors as opposed to
2 skills, which is a skill, a technique that they can
3 employ.
4 Q. So the attitudes that would be demonstrated
5 then as a result of the development of the cognitive
6 skills that are taught would include the ones mentioned
7 here?
8 A. Yes.
9 Q. And, for later elementary school, that would
10 be "support for others' decisions not to use tobacco"
11 and "responsibility for personal health"?
12 A. Yes.
13 Q. And, for middle and junior high school, that
14 would similarly include "responsibility for personal
15 health" and "support for others' decisions not to use
16 tobacco"?
17 A. Yes.
18 Q. The same concepts as later elementary?
19 A. Yes.
20 Q. Then, for senior high school, the attitudes
21 would include "responsibility for personal health" and
22 "support for others' decisions not to use tobacco" --
23 A. Right.
24 Q. -- as well?
25 A. Uh-huh.
26 Q. Now, with regard to "skills," what is meant
27 by that?
28 A. It would be behaviors and activities that

1 students could demonstrate... period.
2 Q. So these are the things that the -- or these
3 are the behaviors that would be demonstrated by people
4 who had -- or by children who had obtained the
5 cognitive knowledge and developed the attitudes
6 mentioned in the prior categories?
7 A. I'm not so sure they're in this article. I
8 would think they could be concurrent, and one might
9 have low cognitive skills and high -- low cognitive
10 understanding and yet high skill levels in some areas
11 or vice versa. They could have very positive attitudes
12 about some concept of tobacco use and very low skills.
13 Q. So for example, one of the skills in later
14 elementary school would be to state the benefits of a
15 smoke-free environment as shown here on Page 24?
16 A. Correct.
17 Q. And that skill could be present even for a
18 student who was not able to, for example, have an
19 attitude or responsibility for personal health?
20 A. Yes. Correct. Yes.
21 Q. So the instructional goals are to develop
22 all of these...
23 A. Correct.
24 Q. ... knowledge, attitudes and skills --

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25 A. Yes.
26 Q. -- to the greatest extent possible?
27 A. Yes.
28 Q. And then one of the skills that is to be

1 developed would be "develop counter-arguments to
2 tobacco advertisements and other promotional materials"
3 in later elementary school.
4 A. Yes.
5 Q. And, in middle and junior high school, one
6 of the skills to be developed is the ability to
7 "request a smoke-free environment"?
8 A. Yes.
9 Q. And skills to be developed for senior high
10 school include encouraging other persons not to use
11 tobacco, identifying and counter strategies used in
12 tobacco advertisements and other promotional materials
13 and development of methods for coping with tobacco use
14 by parents and with other difficult personal situations
15 such as peer pressure to use tobacco?
16 A. Yes.
17 Q. So in general, would it be fair to say that
18 the knowledge, attitudes and skills that these CDC
19 guidelines would develop would include the ability to
20 learn the danger -- or would include knowledge of the
21 dangers of secondhand smoke and the eventual ability to
22 resist -- to request a smoke-free environment?
23 A. Yes.
24 Q. Now, one of the topics that's addressed in
25 Getting Started - Part II --
26 A. {Getting Results.}
27 Q. -- {Getting Results - Part II} is effective
28 strategies for tobacco use prevention, and one of

1 the -- at Page 36 of this document there are some
2 examples -- there's a Figure 2, What Works and What
3 Does Not Work in Tobacco-Use Prevention Education.
4 A. Uh-huh.
5 Q. And, at the top, there is a heading,
6 Ineffective Practices. Now, did any of the work
7 relating to -- or that went into the preparation of
8 Page 36, to your knowledge, include anything that
9 related to secondhand smoke?
10 A. If the Ineffective Practices that are
11 identified there were appropriate to trying to teach
12 children about the harm from secondhand smoke, then
13 they would be ineffective, so it's -- it's -- it's
14 possible but --
15 Q. Right.
16 A. -- you know, similarly with any other area
17 of tobacco instruction.
18 Q. So what you're talking about is, by way of
19 ineffective practices, they are things that are
20 ineffective as educational tools --
21 A. Correct.
22 Q. -- for school-aged children?
23 A. Yes.
24 Q. And one of the things that would be that's
25 identified here is ineffective, as an ineffective
26 practice, is a mass media only approach.
27 A. Uh-huh.

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28 Q. Why is a mass media only approach an

1 ineffective practice in changing behavior of
2 school-aged children?
3 A. The research that is further contained in
4 the document and other research pretty well identifies
5 that mass media alone will not prevent children from
6 experimentation or to intervene when they are
7 experimenting and stop them from continuing or once
8 they are smoking to cause -- to allow them to cease
9 using tobacco products. So it takes a variety of
10 strategies, and no one particular strategy works --
11 works really well. Similarly, there are those who
12 think scare tactics is the most effective strategy and
13 just do that. Well, it doesn't work, and so you need a
14 variety of strategies.
15 Q. Has there been any -- to your knowledge, in
16 any of your working group meetings, has there been any
17 discussion as to the differences in strategy with
18 regard to tobacco control as between the Department of
19 Health Services and the California Department of
20 Education?
21 A. There has been -- there have been humorous
22 references in that there's a natural bit of
23 competitiveness between the two offices and the two
24 agencies, and the Tobacco Control Section appears to be
25 very proud of their media approaches, and we have never
26 criticized them in any way. Likewise, we're very proud
27 of our work in the schools, and they have not
28 criticized us and our efforts in the schools.

1 So -- however, when youth tobacco rates
2 dropped significantly, I was quick to point out that
3 the drop began when I became Administrator of this
4 office and has continued through my four years, so I
5 take full credit for the entire drop of tobacco smoking
6 rates in the State of California among youth.
7 Q. All right. Well, have there been any -- I
8 mean other than these humorous references and the
9 natural competitiveness as between agencies, has there
10 been any disagreements that you'd characterize as
11 substantive as to the policies or implementations of
12 any goals with respect to tobacco use prevention or
13 reduction in exposure to environmental tobacco smoke?
14 A. I don't think so. I think we've both been
15 respectful of each other's efforts. Lately, we're in
16 a -- we have a little disagreement, but with regard to
17 strategies used -- and we have not been critical or
18 with the mass media approach, which in fact has been
19 used by the Centers of Disease Control... and other
20 states have used their work, so I -- it must be good
21 stuff.
22 Q. To your knowledge, have any studies ever
23 been done measuring the effectiveness -- relative
24 effectiveness of educational programs as opposed to
25 mass media approaches with regard to tobacco use,
26 prevention or knowledge?
27 A. Not to my knowledge.
28 Q. And what is the difference? I mean can you

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1 generally describe what the difference in approach is
2 between that taken by the Department of Education and
3 that taken by the Tobacco Control Section with regard
4 to tobacco use prevention?
5 A. I can attempt to describe the differences.
6 Predominantly, they have a lot of money, a
7 lot more money available to their office than we do,
8 and the media campaign that they wage is a costly
9 effort, and so they have a much larger staff and they
10 do contract for media messages, radio and television.
11 We don't do that at all. We have no role in that.
12 They also fund community organizations with
13 some of their money to reach youth that are in the
14 community and they do encourage their community efforts
15 to link with schools, but they're trying to reach
16 children when they're out of school, and in that effort
17 they do a lot of -- hmm -- there's a phrase for it, but
18 I'm not sure. It's like a sting operation where they
19 send young people in to buy cigarettes and see if
20 vendors will sell to them and that sort of thing. We
21 don't do those things.
22 Our programs are, in some cases, knowledge-
23 based where we're trying to make sure they understand
24 the facts with regard to drugs, alcohol, tobacco. Our
25 programs are to develop resiliency in youth; two, our
26 programs try to show youth that using tobacco products
27 is not normative behavior. We try to develop -- use
28 youth development concepts, which would be developing

1 assets in youth... increasing their ability to be
2 resilient to approaches and to make themselves
3 sufficient and strong as they face the media or they
4 face advertising or peer pressure or any of the others
5 and teach them the skills they need so they don't get
6 involved in those products.
7 Q. Could you please turn to Page 49 of the
8 {Getting Results - Part II}. Table 4 is titled TUPE
9 Promising and Innovative Programs Selected for
10 Dissemination. What does this table depict?
11 A. This depicts a group of Innovative Projects
12 and Promising Projects that we funded and that have
13 been in existence for a couple of years so that their
14 materials are developed. They've used the program, and
15 this appears to be a -- appears to be an effective
16 program, and these programs have been -- are in the
17 process of being evaluated with Duerr & Associates and
18 so it lists on the first column the names of the
19 programs, the second column the targeted audience and
20 on the third column what they're focusing on, and the
21 focus in general is prevention. Some have intervention
22 and cessation as well others -- peer education and
23 cultural appropriateness.
24 Q. Do any of the programs identified in Table 4
25 pertain in any way to environmental tobacco smoke?
26 You're familiar with these programs?
27 A. I am not intimately familiar with these
28 programs.

1 Q. Is there anyone in your office who has
2 responsibility for the Promising and Innovative
3 Programs?

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A. There is, but that person, too, would not be intimately knowledgeable of all of them. He probably has a more specific knowledge than I do. That person is DJ Petersen, but I can't think what the "DJ" stands for.

Q. So to your knowledge, do any of these programs pertain to environmental tobacco smoke?

A. I saw a unit at The Basement Bums, the second program listed, and for some reason, my memory seems to say there's something in there on environmental tobacco smoke, but again, I am not positive.

Q. Do you know what "Smokeless School Days" is?

A. I believe that one is out of San Francisco, and that one deals with like coming to a Saturday school for students who have been caught possessing tobacco products or smoking on campus and provides them with an intervention and cessation programs. Notice it's not listed as "prevention," because these students have demonstrated that they either possess or are using tobacco products.

Q. So in order to determine whether there is any TS component to these programs, you'd have to look at each one?

A. Oh, yeah.

Q. What are Rae Kine's responsibilities in your office?

A. She's one of six consultants in this office. Her responsibilities are just as everyone else's; however, everyone does have areas of emphasis to spread it around, and one of hers is to serve as a liaison with the Department of Health Services' Tobacco Control Section, and she is the contract monitor for the California Healthy Kids Program Dissemination Center located in the Los Angeles County Office of Education. Other than that, she serves a particular region in the state for both TUPE and Safe and Drug Free Schools.

Q. That is, she is the district liaison, school district liaison or county liaison, for various counties?

A. No. She's a state -- every consultant has a regional assignment that they serve a certain number of counties, so she's the state liaison to those counties. The counties all have a TUPE and Safe and Drug Free Schools' coordinator, and then many districts also have a TUPE or Safe and Drug Free Schools' person.

Q. So she is the state liaison to the county education offices --

A. Yes, sir.

Q. -- in certain regions?

A. Right.

Q. Is she also a liaison with TUPE coordinators

in the regions?

A. Yes.

Q. Is there anyone in your office whose emphasis includes environmental tobacco smoke?

A. No.

MR. LERNER: We could probably do these as a

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7 group. Off the record.
8 (Discussion held off the record)
9 (Whereupon, Defendants' Exhibit 4274 was
10 marked for identification.)
11 MR. LERNER: Q. Can you please identify
12 Exhibit 4274?
13 A. 4274 is an in-house document that we use to
14 track the record of TUPE funding that comes to the
15 California Department of Education.
16 Q. So this is a document that was prepared by
17 your office?
18 A. Correct.
19 Q. And is this a document that you prepare in
20 the regular course of business?
21 A. Yes.
22 Q. And when was this particular document
23 prepared?
24 A. It was last revised in March of 2000.
25 Q. And what use do you make of this document
26 internally?
27 A. This document serves several purposes.
28 One is that we frequently get people who ask

1 us questions about how much TUPE money does the state
2 Department of Education receive, and they'll ask over
3 the last four years, over the last eight years, over
4 the last ten years, and so forth. So we have this
5 document so we can tell the total number of dollars we
6 receive. We -- beginning in '97-'98, we added the line
7 about entitlements per ADA so we can see that a little
8 clearer, and we also keep track on the very bottom of
9 the number of staff positions we have to administer the
10 TUPE Program in the Department of Education.
11 (Ms. Thro leaves the room.)
12 MR. LERNER: Q. Okay. So the
13 appropriation -- well, let's just go through what each
14 line refers to then.
15 A. Okay.
16 Q. What does the State Operations line --
17 A. That line --
18 Q. -- refer to?
19 A. -- is the amount of money that the
20 California Department of Education receives to support
21 the 7.5 positions listed on Total Person Years down
22 below.
23 Q. All right. Now, are the -- and what does
24 the County Office of Education line refer to?
25 A. Every county Office of Education receives a
26 sum of money to provide technical assistance and
27 leadership in every county on the TUPE Program, and
28 that's the total number of dollars that goes out to the

1 58 county Offices of Education in California.
2 Q. And then the next line is Local Assistance
3 Entitlements Per ADA; is that right?
4 A. No. The last line is Local Assistance.
5 Q. Okay. What does that refer to?
6 A. That refers to the amount of money that goes
7 to Grades 4 through 8 on an entitlement basis and
8 Grades 9 through 12 on a competitive basis.
9 Q. And what does the line Entitlements Per ADA

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10 refer to?
11 A. That shows you the amount of money that goes
12 per ADA to students in Grades 4 through 8 that are
13 participating in the TUPE Program in California.
14 Q. Okay. So the first year where there is a
15 number for that line is 1997-'98?
16 A. Correct.
17 Q. And it was $7.18?
18 A. Right.
19 Q. And then what was the last line? Local
20 Assistance From Unallocated Account?
21 A. It was before my time, but as I understand
22 it, it -- if there are resources left over in the TUPE
23 Program in California, the Treasurer Office puts that
24 money into some sort of an unallocated account. Then
25 that money can be reallocated out to the various
26 tobacco programs. The last year they did that was back
27 in '95-'96.
28 (Ms. Thro rejoins the proceedings.)

1 MR. LERNER: Q. Then what does the line
2 that is called Appropriation refer to?
3 A. That's the sum of the other lines above...
4 State Operations, County Office of Education and Local
5 Assistance.
6 Q. Okay. Does that refer to the sum of money
7 appropriated by the legislature from the Prop. 99 funds
8 for the California Department of Education Prop. 99
9 programs?
10 A. Yes. Correct.
11 Q. Okay. So if we took the sum of all of those
12 appropriations shown here from 1989-'90 through
13 2000-2001, we would have all of the moneys appropriated
14 to date for Prop. 99 funds for the California
15 Department of Education Prop. 99 programs?
16 A. Yes, sir.
17 Q. And that number is about $395 million?
18 A. I'll take your word for it.
19 Q. All right. Now, what is the line that says
20 less DOF Reduc. e.g. PERS?
21 A. The Department of Finance on very few
22 occasions since '89-'90 all the way through re
23 projections for 2000-2001 make adjustments to dollars
24 in various accounts for numerous reasons and this --
25 these -- some of that adjustment can be for the percent
26 which is the public employees' retirement system.
27 So back -- for example, back in '94-'95 they
28 took $79,000 out. In '97-'98, they took $774, and in

1 '98-'99, they took $14,435 out. So it's minor
2 adjustments.
3 Q. So there were some minor adjustments. All
4 right. Now, when it references Total Person Years, you
5 mentioned that refers to personnel?
6 A. Yes.
7 Q. Is that the number of personnel in your
8 office which are -- which have been funded by the TUPE
9 appropriations?
10 A. No.
11 Q. Okay. What does that refer to?
12 A. It refers to...

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13 Q. An amount of money?
14 A. No. It refers to 7-and-one-half person
15 years. For example, you could have 15 people. If they
16 all were working half time in those person years -- so
17 if you have 15 people working half time, you'd have
18 7-and-a-half person years.
19 Q. So this refers to a seven-and-a-half
20 full-time equivalence?
21 A. There we go. Yes, sir.
22 Q. Is that at any assumed compensation rate?
23 A. No.
24 Q. And are these person years -- does this
25 refer to personnel within your office?
26 A. Yes.
27 (Whereupon, Defendants' Exhibit 4275 was
28 marked for identification.)

1 MR. LERNER: Q. Okay. I'm handing you
2 Exhibit 4275, called Tobacco-Use Prevention Education
3 Program, Fiscal Year 1994-1995. Is this a document
4 that was prepared by your office?
5 A. Yes, it was.
6 Q. And when was it prepared?
7 A. July of 2000. It was printed. I believe it
8 would have been prepared at the -- after the end of --
9 the fiscal year of 1994-'95.
10 Q. And is this a record that is kept in the
11 ordinary course of business by your office?
12 A. Yes, it is.
13 Q. Okay. And what does this document show?
14 A. It's a detailed document showing exactly
15 where every single dollar of TUPE funds was expended in
16 my office in the years -- in the Fiscal Year '94-'95.
17 Q. I'm sorry. I meant to ask you:
18 This is a document that is prepared and kept
19 in the ordinary course of business; is that right?
20 A. Yes, you did ask that. Correct.
21 Q. Okay. Now, there is a black box at the top
22 that says Appropriation. What is shown in that box?
23 A. That appropriation line refers to the
24 earlier exhibit, Number 4274, where the appropriation
25 for '94-'95 is listed as $19,147,000. Then you have
26 the same number at the top of the box of $19,147,000,
27 and then as on that sheet where it breaks out the
28 different amounts going to state operations, how much

1 went to the county Office of Education, and in this
2 case there was -- that was one of those years that
3 there was unallocated account money and the Department
4 of Finance adjustment and then the local assistance
5 dollars, the amount that went to the 4 through 8
6 Entitlements, the high school Competitive Grants and
7 the Promising and Innovative. So it then balances out
8 to the number above pretty close.
9 Q. Okay. Now, this has a further breakdown on
10 the expenditure of entitlements --
11 A. Right. Right.
12 Q. -- to that shown on Exhibit 4274, in that
13 this document shows how the district entitlement is
14 allocated between Grades 4 to 8 -- or I say,
15 "allocated" -- among entitlements, high school and

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16 other local assistance; is that right?
17 A. That's correct.
18 Q. And "entitlements" refers to Grades 4
19 through 8?
20 A. Correct.
21 Q. And "high school competitive" refers to the
22 Competitive Grant Programs for Grades 9 through 12?
23 A. Right.
24 Q. And "other local assistance" refers to what?
25 A. Promising and Innovative Projects.
26 Q. And is there a breakdown on how the
27 $1,680,300 for Other Local Assistance was allocated on
28 this document?

1 A. No.
2 Q. How was the -- is there any way to determine
3 how that money was expended?
4 A. I'm sure we have supporting documents on
5 that if you need to know exactly which projects were
6 funded for that money. We would have that.
7 Q. Maybe it's here. I'm not sure. When it
8 says there's --
9 A. Yeah. Oh, it is here.
10 Q. It's part of the Total Discretionary; is
11 that correct?
12 A. Right. Yeah. That's right.
13 Q. What is meant by "Total Discretionary"?
14 A. That's the money that goes to 4 through 8
15 Entitlements and 9 through 12 Competitive Grants.
16 Q. That's the money that does not --
17 A. Wait a minute. Does not go to those. All
18 right.
19 Q. All right. So the "discretionary" means
20 basically two-thirds for Innovative Projects and
21 one-third for Other?
22 A. Yes.
23 Q. And the Innovative Projects at that time
24 were the Prop. 99 funding for, I understand, Indian
25 Education Centers and other Innovative Programs?
26 A. That's right. Right, and they were not --
27 and that might represent ten other programs.
28 Q. Okay. Now, I see that there is no fiscal

1 year appropriation and expenditure documentation for
2 years prior to 1994 to 1995. Do you have records for
3 prior fiscal years?
4 A. It's before my time.
5 Q. So your office doesn't have them?
6 A. (Shakes head.)
7 Q. Okay. Are you aware that prior to 1995 --
8 1994-1995 there was at one time entitlement money for
9 Grades 9 through 12?
10 A. Yes, I had heard that.
11 Q. Okay. Do you know what years there was
12 entitlement money --
13 A. No.
14 Q. -- for Grades 9 through 10?
15 A. No, I don't.
16 Q. To your knowledge, was there ever
17 entitlement money under Prop. 99 for Grades K through
18 3?

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19 A. Yes, there was.
20 Q. Do you know during what years there was
21 entitlement money for Grades K through 3?
22 A. No. No.
23 Q. It was before your time as well?
24 A. Oh, yeah.
25 Q. So that by the time you came in as
26 Administrator there was no longer entitlement money for
27 K through 3?
28 A. K through 3.

1 Q. And 9 through 12?
2 A. Correct.
3 Q. Does the Healthy Kids Program Office
4 distribute any Prop. 99 funds for K through 3
5 education?
6 A. No, we do not.
7 Q. Do you know whether anyone in the state
8 government distributes funds for K through 3 tobacco
9 control education?
10 A. No, I don't.
11 (Whereupon, Defendants' Exhibit 4276 was
12 marked for identification.)
13 MR. LERNER: Q. And can you identify
14 Exhibit 4276, please?
15 A. Not yet. Yes, I can.
16 Q. What is this document?
17 A. This is similar to the prior document except
18 it reflects the same information for the Fiscal Year
19 1995-'96.
20 Q. So this is the summary of the appropriations
21 and spending of TUPE funds by the Department of
22 Education for Fiscal Year 1995-1996?
23 A. Yes.
24 Q. And this document was prepared -- printed by
25 your office on or about July 13, 2000?
26 A. Right.
27 Q. And this document also contains information
28 that was prepared and kept in the ordinary course of

1 business --
2 A. Absolutely.
3 Q. -- by your office?
4 A. Yes, sir.
5 Q. And this document then shows more -- in more
6 detail than for the prior fiscal year how TUPE or, I
7 should say, the Prop. 99 appropriations were expended?
8 A. Right. I shared this document with our TUPE
9 work group and TEROC and others so that there has never
10 been a question that -- where a single dollar in our
11 office has ever been spent.
12 (Whereupon, Defendants' Exhibit 4277 was
13 marked for identification.)
14 MR. LERNER: Q. Okay. And can you identify
15 Exhibit 4277?
16 A. Yes. This is a similar display of funding
17 except that we changed the format so that it appeared
18 easier for people to understand who might not be
19 familiar with the complicated nature of TUPE funding.
20 Q. Now, this is a document that contains
21 information that was collected and prepared and kept in

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22 the ordinary course of business by your office?
23 A. Yes.
24 Q. Okay. Now, since the format of this
25 document is different than the last ones, I'm going to
26 ask you to explain it for us. What is meant by
27 "Overall Total"?
28 A. That's the total appropriation for the year

1 '96-'97 that comes to the Department of Education.
2 Q. So that's -- that was $43,042,000?
3 A. Yes.
4 Q. And then what is referenced by the box
5 "Local Assistance," which shows the figure $39,573,555?
6 A. That represents the dollars that went to
7 Local Assistance that included 4 through 8
8 entitlements, high school competitives, innovatives,
9 and our discretionary pot.
10 Q. Okay. What became of the difference between
11 the $43,042,000 number and the $39,573,000 number?
12 A. The lines that are perpendicular to the
13 Overall Total box and extend to the left and right of
14 the page and then on down to the bottom show that
15 there's... $2.5 million went to the county Offices of
16 Education to provide the technical assistance and
17 leadership in each county, and the box on the left,
18 which indicates the $951,495, that went to the state
19 operations.
20 Q. Okay. So in the 1996-'97 year, there was
21 $14,400,000 expended on Grades 4 through 8
22 entitlements?
23 A. Yes, sir.
24 Q. That's what's meant by "district
25 entitlements" in the left hand box?
26 A. Yes.
27 Q. And then competitive grants for that year
28 totaled...

1 A. $15,718,614.
2 Q. That's out of the $43,000,000 total?
3 A. Right.
4 Q. And then there were carryover funds of
5 $5,454,941 for high school competitive grants; is that
6 right?
7 A. That was carryover. For that amount, we
8 carried it into the next year and actually used it for
9 Grades 4 through 8 entitlements.
10 Q. So that money was spent but not until the
11 1997-'98 year?
12 A. Yes, sir.
13 Q. Okay. Then for innovative programs, of the
14 Overall Total, $2,666,667 was spent?
15 A. Right. No. I take that back.
16 For the innovative programs, $1,011,949 was
17 spent and $1,454,718 was carried over in '97-'98 and
18 then for the Indian Education Centers, of the $200,000
19 available, we only allocated $64,679, and therefore, we
20 carried over $135,321.
21 (Whereupon, Defendants' Exhibit 4278 was
22 marked for identification.)
23 MR. LERNER: Q. Okay. Now can you identify
24 Exhibit 4278, please? Is this also a chart showing the

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25 TUPE funding for 1997-'98 as appropriated and expended
26 by the Department of Education?
27 A. Yes. This is a similar document to the
28 preceding one. It's for Fiscal Year '97-'98.

1 Q. And this document also contains information
2 that was collected and prepared and kept by your office
3 in the ordinary course of business?
4 A. Yes. That's correct.
5 Q. And is there anything different about the
6 organization of Exhibit 4278 then, the same chart for
7 the prior fiscal year?
8 A. The only thing I could, perhaps, draw your
9 attention to is that we increased the number of dollars
10 going to county Offices of Education. Our year was
11 $2.5 million and we increased it by using some of our
12 discretionary money and since we didn't have a
13 particular use for it in that year in other use, other
14 than to help build a relationship with the county
15 offices to do more technical assistance.
16 Beyond that, the -- and the chart is in the
17 same format flow as the preceding one.
18 Q. So the total overall appropriation to the
19 Department of Education of Prop. 99 funds for 1997-'98
20 was $46,105,255?
21 A. No. That was the total amount available.
22 The appropriation base for the year was $35,407,000,
23 and as you'll recall, we discussed the last one. There
24 was some carryover money for the prior year, and so we
25 show that estimated amount there.
26 Q. And why was the carryover as large as
27 $10,699,000 for this year?
28 A. Because the high school competitive grants

1 were a very complicated process. In some years, there
2 were a lot that applied, in other years very few, and
3 one of our goals is to try and level that out so we
4 don't have these dramatic fluctuations in grants.
5 Because you will see that under this year we
6 only funded $3,372,904 in competitive grants. Back on
7 Exhibit 4277, we funded $15,000,000, $15,718,000. So
8 it's a significant difference in the numbers of grants
9 funded, and we would like to try to level that out.
10 (Whereupon, Defendants' Exhibit 4279 was
11 marked for identification.)
12 MR. LERNER: Q. And then Exhibit 4279 is a
13 similar chart for the 1998-'99 fiscal year --
14 A. Right.
15 Q. -- prepared by your office in -- of
16 information prepared and kept by your office in the
17 ordinary course of business?
18 A. Yes, sir. And, there, the county offices
19 are at $3.8 million. There was -- the budget language
20 was revised to reflect. This was the first year that
21 we actually funded according to the law without having
22 to prorate funding.
23 Q. What do you mean "without having to
24 prorate"?
25 A. If there's not enough -- most state
26 legislation says, if they don't appropriate enough
27 money, then try to use a formula but prorated on a

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28 lower base, and that's what we had to do in the past,

1 but now because of the language they add variable to
2 fund them according to the formula and the law.
3 (Whereupon, Defendants' Exhibits 4280-4281
4 were marked for identification.)
5 MR. LERNER: Q. Okay. I'm going to ask if
6 you can identify Exhibits 4280 and 4281 as charts
7 prepared by your office showing the TUPE appropriation
8 and funding for Fiscal Years 1999-2000 that were
9 prepared from information kept in the ordinary course
10 of business by your office.
11 A. Yes, sir. Exactly as you stated, they are
12 for the years '99-2000 and then our proposed funding
13 for 2000-2001.
14 Q. Has the proposed funding for 2000-2001 been
15 approved at this time?
16 A. Yes.
17 Q. And when do you take the "proposed" off the
18 document?
19 A. As soon as we get some time, when we don't
20 have to do depositions and those sorts of things.
21 Q. All right. But, nonetheless, this document
22 Exhibit 4281 will be accurate for the 2000- --
23 A. Yes.
24 Q. -- 2001 fiscal year?
25 A. Yeah. It's very accurate the way it is, but
26 there's probably a few little tweakings here and there.
27 (Whereupon, Defendants' Exhibit 4282 was
28 marked for identification.)

1 MR. LERNER: Q. Let me ask if you can
2 identify Exhibit 4282, please.
3 A. Yes. This is an in-house document and it --
4 it includes the Innovative Projects and the various
5 categories that were funded by the '95-'96 fiscal year,
6 '96-'97 fiscal year and '97-'98 and '98-'99 and the
7 2000-2001 budget year.
8 Q. Are you knowledgeable concerning -- well,
9 this is a document that was also prepared in the
10 ordinary course of business --
11 A. Yes.
12 Q. -- by your office from information that you
13 keep in the ordinary course of business?
14 A. Yes.
15 Q. So it listed each of the innovative
16 contracts and the amounts expended for them?
17 A. Right.
18 Q. That is, according to the fiscal year?
19 A. Right.
20 Q. Now, to your knowledge -- are you familiar
21 with the nature of these various Innovative Projects?
22 A. No, I am not.
23 Q. So you're not able to say whether any of
24 them pertains in any respect to educational initiatives
25 relating to the risk of exposure to environmental
26 tobacco smoke?
27 A. No, I could not do that.
28 Q. Okay. One of the other Innovative Projects

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1 mentioned... On Page DOE 15, which is the third page of
2 this exhibit, is the Duerr Evaluation, and you earlier
3 described the Duerr Evaluation as one of the other
4 contracts you -- recommendations that were made.
5 What is the "Duerr Evaluation"?
6 A. Well, since these are innovative and we do
7 not have a research base for them, what we're trying to
8 build is some sort of an evaluation base to indicate
9 some measure of effectiveness of these programs.
10 Duerr is a company with which we contracted
11 to conduct that evaluation of these projects and to
12 make recommendations as to whether they thought they
13 should be continued. Should they be stopped? Is
14 there -- are they getting positive results? So it's
15 very typical evaluation questions.
16 Q. And has Duerr provided you with any
17 evaluation materials?
18 A. Some of the earlier ones we do. I don't
19 believe we have the evaluations yet for... I think
20 '97-'98 he's doing now. I think he's summarizing those
21 right now, the ones that started in '97-'98, because
22 that would be two years of running. So I believe
23 that's the ones he's working on now, and we should have
24 those by the end of August.
25 MR. AGUILAR: Can we go off the record for a
26 second?
27 (Pause in proceedings 3:37 to 3:41)
28 //////

1 (Whereupon, Defendants' Exhibits 4283-4294
2 were marked for identification.)
3 MR. LERNER: Q. Can you identify
4 exhibits -- sequentially identify for the record
5 Exhibits 4283, following, and tell us what these
6 documents are and whether they're -- first, whether
7 they're documents that are prepared by your office in
8 the regular course of business and, if so, what they
9 are?
10 A. Okay. Exhibit Number 4283 is a document
11 prepared in the regular course of business in the
12 Healthy Kids Program Office. This document is a
13 Request for Applications for Innovative and Promising
14 Projects funded with the Tobacco-Use Prevention
15 Education money, and this was sent out on February 9th
16 of 1996.
17 Q. So this is a document that is a Request for
18 Applications for grants?
19 A. Right. Right.
20 Q. And then can you identify Exhibit 42...
21 A. 84.
22 Q. Did we do 82? I'm sorry. 4284.
23 A. 4284 is a similar document; however, it is a
24 Request for Applications for competitive grants for
25 Grades 9 through 12, funded with the Tobacco-Use
26 Prevention Education Program. It was sent out on
27 February 28th of 1997 requesting responses from
28 Grades 9 through 12.

1 Q. Just for the record, who is Jane Irvine
2 Henderson?
3 A. She was the Deputy Superintendent

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4 responsible for this program, and she was replaced by
5 Kathy Lewis, as I --
6 Q. To whom you report?
7 A. To whom I report through Wade Brynelson.
8 Q. And what is Exhibit 4285?
9 A. It is another Request for Applications for
10 the Innovative and Promising Projects that was mailed
11 on March 10th, 1997. Again, it's with TUPE funding.
12 Q. What is Exhibit 4286?
13 A. 4286 is an addendum to the competitive grant
14 that was sent out earlier that we just referred to, and
15 there were small changes to the RFA regarding the
16 indirect costs rate and some changes to Appendix A in
17 the packet, that sort of thing. So this is merely an
18 addendum sent out on April 21st, 1987. It's signed by
19 the Deputy Superintendent, Jane Irvine Henderson.
20 Q. And what is Exhibit 4287?
21 A. 4287 was a guideline -- a working draft of
22 guidelines that we distributed to programs for Tobacco-
23 Use Prevention Education guidelines and requirements,
24 dated 1997-'98.
25 Q. And your office produced this document?
26 A. In the regular course of business, yes, sir.
27 Q. All right. And what is Exhibit 4288?
28 A. 4288 is the Request for Applications for

1 competitive grants for TUPE Programs for Grades 9
2 through 12, and it was for the next year, sent out on
3 September 9th, 1997.
4 Q. And then Exhibit 4289 is what?
5 A. 4289 is another Request for Applications for
6 Grades 9 through 12 for the next year, dated
7 February 11th, 1998.
8 Q. And then Exhibit 4290 is a request for TUPE
9 competitive grants for Grades 9 through 12?
10 A. Through twelve. And, this year, we did a
11 multiple applications, and this one was dated
12 October 13th, '98.
13 Q. All right. And then Exhibit 4291 is what?
14 A. This is a Request for Applications to
15 American Indian Education Centers for their competitive
16 grant process, dated January 8th, 1999.
17 Q. And this is for the 1999-2000 fiscal year?
18 A. Yes.
19 Q. All right. And then what is Exhibit 4292?
20 A. This is the Request for Applications for
21 innovative and promising programs dated January 19th,
22 '99, and funding for these is appropriated through the
23 '98-'99 and '99-2000 budget act and dated, again,
24 June 15th, '99 through June 15th of 2001.
25 Q. And this was sent out in the regular course
26 of business and signed by Kathy Lewis, to whom you
27 report through Mr. Brynelson?
28 A. Through Mr. Brynelson.

1 Q. Right. And then what is Exhibit 4293?
2 A. It is the TUPE competitive Request for
3 Applications for Grades 9 through 12 and for innovative
4 and promising programs. We tried to reduce the
5 paperwork by combining these applications into one, and
6 it was sent out on September 8th of 1999, signed by

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7 Kathy Lewis, Deputy Superintendent, and this is...
8 period.
9 Q. I think we can eliminate Exhibit 4294. It
10 appears to be a duplicate. 4293. Let's re number what
11 we have as 4295 and call that 4294.
12 What is the document that -- the next
13 document dated December 10, 1999?
14 A. Exhibit 4294, dated December 10th, 1999, is
15 a 9 through 12 competitive grant and innovative and
16 promising that was sent out December 10th of '99 and is
17 similar to previous Requests for Applications that are
18 developed and disseminated in the regular course of
19 business of the Healthy Kids Program Office.
20 Q. So annually then, would it be fair to say
21 that the Department of Education sends the districts --
22 the district -- the school districts requests for
23 proposals or grant money under the Competitive Grant
24 Program for Grades 9 through 12 as well as for
25 Innovative and Promising Programs?
26 A. And Indian Education Centers.
27 Q. Now, is it also correct that requests are
28 sent out for entitlement funds for Grades 4 through 8?

1 A. That is a different process. It's called a
2 Consolidated Application Process, and it is not
3 competitive. It is a process in which they have to
4 indicate based upon their average daily attendance,
5 submit a budget and identify a number of assurances
6 that they will administer the program in accordance
7 with the law.
8 Q. And, for that process, forms are sent out to
9 each of the districts?
10 A. That's correct.
11 Q. And certain paperwork has to be returned by
12 the districts in order to obtain the entitlement money?
13 A. That's correct.
14 Q. Is there a website for the database of the
15 dissemination center in Los Angeles?
16 A. It's the same website as for the Healthy
17 Kids Resource Center, and they're merging them and I
18 think it's up and running, but I have not seen it
19 myself. It's supposed to have been up and running last
20 week, but I haven't seen it, so...
21 Q. Do you know whether the database or any
22 other source of data tracks the tobacco control
23 curricula programs used by the various school
24 districts?
25 A. Yes. We have an annual report that comes in
26 that they're supposed to report to us what programs
27 they have used in the past, sir.
28 Q. And are those reports abstracted or

1 summarized in some fashion?
2 A. No.
3 Q. So the raw data as to what curricula are
4 used in the school districts are found in the
5 individual reports at this point?
6 A. Yeah. We're trying to put them on a CD rom
7 disk.
8 Q. So at some point, it might be possible --
9 A. Yes.

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Q. -- to determine, in fact, what curricula are used and what tobacco prevention or tobacco control matters are taught in the schools?

A. Yes.

MR. LERNER: Thank you very much.

(Whereupon, the deposition was concluded at 3:50 p.m.)

---oOo---

I declare under penalty of perjury that the foregoing is true and correct. Subscribed at _____, California, this ____ day of _____, 2000.

_____

Gerald H. Kilbert

CERTIFICATE OF REPORTER

I, SHANNON TAYLOR-SCOTT, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: August 14, 2000

_____

SHANNON TAYLOR-SCOTT, RPR, CSR 10067

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